

## AGREEMENT FOR THE SALE AND PURCHASE OF SPRING WATER

THIS AGREEMENT FOR THE SALE AND PURCHASE OF SPRING WATER (the "Agreement") is entered into as of the first day of October, 2003, by and between MCLOUD COMMUNITY SERVICES DISTRICT, a public agency ("District"), and NESTLÉ WATERS NORTH AMERICA INC., a Delaware corporation ("Purchaser").

### RECITALS:

A. District is a political subdivision of the State of California and a Community Services District formed and operating pursuant to the provisions of Government Code Section 61000 et seq. with power to sell and distribute water in accordance with the terms hereof.

B. District possesses water rights to spring water from Intake Spring, Lower Elk Spring and Upper Elk Spring (collectively the "Springs") described in Exhibit A hereto, which District has put to beneficial use.

C. Purchaser desires to purchase spring water from District from one or more of the Springs for its exclusive use in its bottled water and beverage business through a segregated spring water collection and distribution system (separate and apart from District's other water distribution facilities) which will be dedicated exclusively to supplying spring water to a bottling facility to be developed by Purchaser within District's service area.

D. District and Purchaser have agreed to cooperate in the development, sale and purchase of spring water and the location and construction of segregated collection and delivery systems and a bottling facility with regard to the purchase by Purchaser from District of water from District's Springs.

E. District and Purchaser have determined that they are prepared to enter into a long-term agreement with respect to the due diligence, design, construction, maintenance and operation of certain facilities regarding the Springs and Purchaser's purchase from District and District's sale to Purchaser of spring water from the Springs for use in Purchaser's beverage business ("Spring Water") pursuant to the terms of this Agreement .

F. District has determined that it is in the public interest and in the best interest of the District to enter into this Agreement.

NOW, THEREFORE, in consideration of the preceding recitals and the mutual covenants hereinafter contained, the parties agree as follows:

### ARTICLE 1 DEFINITIONS

1.1 Defined Terms. The following terms as used in this Agreement have the following meanings:

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"Ancillary Facilities" means any new facilities and improvements, other than the Collection System and the New Delivery System, to be owned or operated by District and modifications to existing facilities owned or operated by District as may be reasonably necessary to

carry out the purpose and intent of this Agreement, or any portion hereof.

“Bottling Facility” means a new bottling facility to be constructed by Purchaser as generally described in this Agreement, which may include a permanent bulk loading station.

“CEQA” means the California Environmental Quality Act, Section 21000, *et seq.*, of the Public Resources Code, as amended.

“Closing Date” means the earlier of (i) the fifth (5<sup>th</sup>) anniversary of the date hereof, and (ii) the date on which the Contingency Period ends pursuant to Section 2.5.1.

“Collection System” means a new storage and collection system, designed and constructed consistent with this Agreement, that provides Purchaser with segregated water storage and collection systems for Spring Water that are separate and distinct from District’s other facilities.

“Contingency Funds” means the amount of \$250,000 deposited into Escrow pursuant to Section 2.4.1.

“Contingency Period” means the period time commencing on the date hereof and ending on Closing Date, subject to Section 9.21.

“DHS” means the California Department of Health Services.

“Discretionary Permits” means any and all federal, state and local governmental permits and any governmental or regulatory approvals, other than those permits and approvals that are non-discretionary or ministerial in nature, that may be required or desirable, as determined by Purchaser in its reasonable judgment, (i) to develop, implement and/or utilize the Project, (ii) to establish the Springs, the Collection System, the New Delivery System and the Ancillary Facilities, or any of them, as a legally approved source for spring water, (iii) to effect any provision of or action contemplated under this Agreement, and (iv) to obtain any CEQA documentation, review and/or approvals (including, the final adjudication of any legal challenges thereto) required for the Project, or any portion thereof.

“Escrow” means that certain account, Escrow No. 33820066, maintained by Escrow Holder pursuant to the terms and conditions of the Escrow Agreement.

“Escrow Agreement” means an escrow agreement substantially in the form of Exhibit C attached hereto, to be executed by District, Purchaser and Escrow Holder and delivered concurrently with this Agreement.

“Escrow Holder” means Chicago Title Company.

“HE Rate” means the monthly service fee for a specified service adopted by District and published in its Policy and Procedure Manual from time to time and expressed as an amount per household equivalent for such service.

“Internal Standards” means the quantitative analytical standards for water quality adopted and amended by Purchaser from time to time and uniformly applied by Purchaser to its

California spring water sources. Purchaser's Internal Standards in effect as of the date hereof are attached hereto as confidential Exhibit D.

“Maximum Take” means 1,600 acre feet per year and 1,250 gallons per minute of Qualified Water.

“New Delivery System” means new water pipelines, pressure controls, sanitation systems and related facilities designed to deliver Spring Water from the Collection System to the Bottling Facility and provide Purchaser with a segregated delivery system for Spring Water that is separate and distinct from District's other facilities.

“Non-Qualified Water” means Spring Water that fails to meet, in Purchaser's sole and absolute discretion, (a) any legal standards of identity for spring water, (b) any quality standards for spring water imposed by federal, state or local law or agency, or (c) the Internal Standards. California standards for spring water are found at California Health and Safety Code §11175. Federal standards for the legal definition of spring water are found in the Code of Federal Regulations at Title 21, Part 165, §165.110.

“O&M Budget” means an annual operations and maintenance budget jointly developed and approved by District and Purchaser for purposes of managing and controlling operations, maintenance and repair obligations relating to the Collection System, the New Delivery System and the Ancillary Facilities.

“Operations Commencement Date” means the date on which Purchaser has received a final certificate of occupancy permitting Purchaser to commence operating the Bottling Facility.

“Project” means, collectively, the Bottling Facility, the Collection System, the Ancillary Facilities and the New Delivery System.

“Purchase Price” means an amount equal to the HE Rate for water multiplied by two hundred (200), as such Purchase Price may be adjusted from time to time pursuant to Sections 3.2, 5.4.2 and/or 5.4.3. (For illustration purposes, as of the date hereof, the HE Rate for water is \$17.60 per household equivalent. Therefore, if Qualified Water were being purchased as of the date hereof, the Purchase Price would be equal to \$17.60 multiplied by 200 or \$3,520.00 per month.)

“Qualified Water” means Spring Water that meets, in Purchaser's sole and absolute discretion, (a) all legal standards of identity for spring water, (b) all quality standards for spring water imposed by federal, state or local law or agency, and (c) the Internal Standards. California standards for spring water are found at California Health and Safety Code §11175. Federal standards for the legal definition of spring water are found in the Code of Federal Regulations at Title 21, Part 165, §165.110.

“Term” means the period of time this Agreement remains in effect.

1.2 Incorporation of Recitals. The Recitals appearing at the beginning of this Agreement are incorporated herein and expressly made a part hereof.

1.3 Incorporation of Exhibits and Schedules. All exhibits and schedules hereto are

incorporated herein and expressly made a part hereof.

1.4 Other Rules of Construction. The words "include", "includes" and "including" shall not be limiting, and shall be deemed in all instances to be followed by the phrase "without limitation". References to "days" shall mean calendar days, unless otherwise indicated. This Agreement is the result of negotiations among and has been reviewed by each party hereto and their respective counsel. Accordingly, this Agreement shall be deemed to be the product of all parties hereto, and no ambiguity shall be construed in favor of or against any party.

## ARTICLE 2 FEASIBILITY, PLANNING AND PERMITTING OF PROJECT

2.1 Contingency Period. During the Contingency Period, Purchaser has the right to evaluate the feasibility of (i) the development and use of the Springs as a spring water source, and (ii) the siting, design and construction of the Bottling Facility.

2.2 Due Diligence. During the Contingency Period, Purchaser and District shall evaluate the feasibility of the development of the Project, including the Springs resources, and will establish a plan and design for spring water testing, monitoring, collection and distribution system necessary to meet Purchaser's standards and proposed uses. The Contingency Period will also be used to apply for and secure all Discretionary Permits and to assess other environmental, title, physical, water quality and economic aspects of the Project.

2.3 Access to District Property; Installation of Monitoring Devices. At any reasonable time and from time to time during the Contingency Period, in accordance with the access protocols attached hereto as Exhibit B, Purchaser and its consultants shall have access to the Springs and surrounding areas owned, possessed, operated or managed by District and to District's other property as may be necessary, in Purchaser's good faith judgment, to carry out the purposes of this Article 2. In addition, District shall permit Purchaser to install water monitoring equipment, at Purchaser's sole cost and expense, which equipment and the installation thereof shall be approved prior to installation by District in its reasonable discretion, at each of the Springs and at such other locations, including at any existing water storage and delivery facilities owned or operated by District, to monitor, test and evaluate the Spring Water for consistency with Purchaser's quantitative and qualitative requirements. In carrying out the purpose and intent of this Section 2.3, Purchaser and District shall abide by the access protocols. Further, Purchaser and District agree to conduct joint training of their respective employees as soon after the date hereof as is reasonably possible to fully and effectively implement the access protocols.

### 2.4 Contingency Fees.

2.4.1 Contingency Funds. Within sixty (60) days after the date hereof, Purchaser shall deposit the Contingency Funds into Escrow to be held by Escrow Holder in accordance with the terms of this Agreement and the Escrow Agreement.

2.4.2 Initial Disbursement. If Purchaser has not tendered the notice of cancellation in accordance with Section 2.6 within ninety (90) days after the date hereof, then within three (3) business days after the expiration of such ninety (90) day period, Escrow Holder shall disburse \$25,000 of the Contingency Funds to District and the amount so disbursed shall be deemed fully

earned by District and non-refundable to Purchaser.

2.4.3 Additional Disbursements. During the Contingency Period, within ten (10) calendar days prior to each of the first, second, third and fourth anniversaries hereof, Escrow Holder shall disburse \$56,250 of the Contingency Funds to District and each such disbursement shall be deemed fully earned by District and non-refundable to Purchaser.

2.5 Closing.

2.5.1 Notice of Closing. Upon Purchaser's determining, in Purchaser's good faith and reasonable judgment, that all Discretionary Permits have been received by District or Purchaser, Purchaser shall, within ten (10) days after such determination, deliver written notice to District specifying the Closing Date, which Closing Date shall be within ten (10) days after the date of such notice. The Contingency Period is for Purchaser's benefit and may, at Purchaser's option, be waived or shortened by Purchaser at any time by notice to District. In no event shall the Closing Date occur later than the fifth (5<sup>th</sup>) anniversary of the date hereof, subject only to Section 9.21.

2.5.2 Effect of Closing. Upon the Closing Date:

(i) Purchaser's right to cancel this Agreement pursuant to Section 2.6 shall terminate; and

(ii) Escrow Holder shall disburse the balance of Contingency Funds then remaining in Escrow to District and the amount so disbursed shall be deemed fully earned by District and non-refundable to Purchaser.

2.6 Cancellation.

2.6.1 Cancellation of Agreement During Contingency Period. At any time during the Contingency Period, Purchaser may cancel this Agreement, with or without cause, by giving written notice of such cancellation to District on or before the Closing Date, with a copy of such notice to Escrow Holder.

2.6.2 Effect of Cancellation. Upon Purchaser's giving notice to District pursuant to Section 2.6.1:

(i) This Agreement shall terminate immediately and be of no further force and effect (other than the provisions hereof which by their express terms survive the expiration or termination of this Agreement);

(ii) All Contingency Funds then being held by Escrow Holder shall be released immediately to Purchaser; and

(iii) Except as otherwise expressly provided in this Agreement, District and Purchaser shall be relieved of any further obligations hereunder.

2.7 Due Diligence Costs. All costs incurred by District during the Contingency Period, pursuant to a budget developed and approved by Purchaser and District, in determining

the feasibility, scope and design of the Project and performing other activities contemplated under this Article 2, including reasonable costs and fees of District's third-party consultants and District's outside counsel, including documentation of this Agreement, shall be reimbursed by Purchaser. Notwithstanding the foregoing, all legally required costs and expenses reasonably incurred by District pursuant to this Agreement shall be reimbursed by Purchaser and are not subject to Purchaser's prior approval. The obligation of Purchaser under this Section 2.7 shall survive the termination or cancellation of this Agreement.

## ARTICLE 3 SALE AND PURCHASE OF WATER

### 3.1 Sale of Spring Water.

3.1.1 Interim Sales. From and after the Closing Date, Purchaser shall have the right, but not the obligation, to commence taking deliveries of Qualified Water on an interim basis from District's Springs for bulk delivery to Purchaser's other bottling facilities located in northern California. The purchase price for such interim purchases of Qualified Water shall be \$35 per truck load based on a maximum per truck capacity of 6,700 gallons. Commencing on the date when Purchaser first takes deliveries of Qualified Water, Purchaser shall pay District such interim price for Qualified Water. Purchaser shall, on a monthly basis, provide District with a record of the number and capacity of trucks loaded in connection with the interim purchases. District shall prepare invoices and bill Purchaser on a monthly basis. Purchaser may construct pipelines and a loading facility, the design and location of which must be approved by District in its reasonable discretion, on property to be acquired by Purchaser or on property provided by District, in either event at Purchaser's sole cost and expense, so that Purchaser can commence receiving Qualified Water on such interim basis. In addition, District shall permit the modification, at Purchaser's sole cost and expense, of District's existing facilities to the extent necessary to permit Purchaser to make interim purchases and utilize any such loading facility and related pipelines. At Purchaser's request, District shall cooperate with and assist Purchaser in obtaining the property, easements and permits and complying with all reasonably necessary or required environmental or regulatory review by local, state and/or federal agencies with respect to any such interim purchases. Purchaser will reimburse District its reasonable costs in cooperating with and assisting Purchaser pursuant to this Section 3.1.1. Purchaser's right to make interim purchases under this Section 3.1.1 shall terminate on the fifth (5<sup>th</sup>) anniversary of this Agreement unless Purchaser has commenced construction of the Bottling Facility prior to said fifth (5<sup>th</sup>) anniversary, in which case Purchaser shall have the right to continue to make interim purchases in accordance with this Section 3.1.1 until the Operations Commencement Date. Upon the Operations Commencement Date, any Qualified Water taken by Purchaser from the Springs shall be governed by Section 3.1.2. Notwithstanding the foregoing, Purchaser shall not be permitted or entitled to make interim purchases of Qualified Water pursuant to this Section 3.1.1 after the seventh (7<sup>th</sup>) anniversary of the Effective Date.

Purchaser shall have the option to continue to make interim purchases of Qualified Water after the seventh (7<sup>th</sup>) anniversary of the Effective Date of this Agreement by (a) providing written notice to District of Purchaser's exercise of this option to continue to make interim purchases; and (b) payment by Purchaser to District of the Purchase Price pursuant to Section 3.2 and the Exclusivity Fee pursuant to Section 3.7.1, with such payments commencing on the date of Purchaser's written notice to District of the exercise of its option to continue interim purchases of Qualified Water. Purchaser's option to continue to make interim purchases of Qualified Water

pursuant to this paragraph shall terminate upon District's notice of termination after the tenth (10<sup>th</sup>) anniversary of the Effective Date of this Agreement pursuant to Section 5.4.4.

3.1.2 Long-Term Sales. Commencing on the Operations Commencement Date, District shall sell exclusively to Purchaser, and Purchaser shall purchase from District, Qualified Water from the Springs in such quantities as may be requested by Purchaser up to the Maximum Take. The Maximum Take will be prorated for the first year and any partial year on an actual year/actual day basis.

3.1.3 Exclusivity. At all times during the Term, Purchaser shall have the exclusive right to take delivery of and purchase Spring Water from District for the production of bottled water products or any other beverage products, including beer, soft drinks, juices and juice products, for wholesale or retail distribution. District hereby acknowledges that Purchaser's exclusive right to purchase Spring Water from District for such purposes is a material term of this Agreement. District shall not, without Purchaser's prior written consent, enter into discussions or negotiations with or permit any other person or entity to purchase or use any Spring Water or to develop the Springs during the Term, for any purpose that Purchaser deems, in Purchaser's sole discretion, to be in competition with Purchaser's bottled water and beverage business. Notwithstanding the foregoing, at all times during the Term, with respect to any Spring Water diverted to District pursuant to Section 5.4, District may deliver such Spring Water to its residential, municipal and industrial customers for consumption within District's service area, provided such consumption is not otherwise inconsistent with this Section. Nothing in this Section 3.1.3 shall impair the ability of District to access water supply from the Springs in addition to the amount contracted to be sold to Purchaser for any lawful purpose of the District, except District shall not have the right to sell or convey spring water to any purchaser engaged in the commercial water bottling or beverage business, as set forth above in this Section 3.1.3.

3.2 Purchase Price. Commencing on the Operations Commencement Date and during the Term, Purchaser shall pay District the Purchase Price for Qualified Water in each calendar month during the Term on or before the 26<sup>th</sup> day of the next succeeding calendar month whether or not Purchaser has received an invoice therefor from District. If at any time during the Term, District changes the method of pricing water for all of its customers and such pricing is no longer based on the HE Rate, the Purchase Price shall nonetheless continue to be calculated and paid on an HE Rate basis, with any increases or decreases in water service fees adopted by District being applied to the Purchase Price at the same rate of change in such water service fees as is applied to all of District's residential customers.

3.3 Additional Water. From time to time during the Term, Purchaser may desire to purchase Qualified Water in excess of the Maximum Take. In such event, Purchaser shall notify District of its request for such additional water and District shall have a first right of refusal to supply the amount of additional Qualified Water so requested. To the extent District elects and is able to supply such additional Qualified Water, (i) any modifications to the Collection System, the New Delivery System, the Ancillary Facilities or other District infrastructure necessary to deliver the additional Qualified Water shall be made by District at Purchaser's sole cost and expense; provided, Purchaser gives its prior consent to such modifications, and (ii) the purchase price for such additional Qualified Water shall initially be One Hundred Twenty and No/100 Dollars (\$120.00) per acre foot and shall be adjusted thereafter at the same times and at the same rates of change as the Purchase Price is adjusted pursuant to Section 3.2 hereof. Notwithstanding the foregoing, nothing in this

Agreement shall (i) obligate District to provide Spring Water to Purchaser in excess of the Maximum Take, or (ii) obligate Purchaser to purchase Qualified Water in excess of the Maximum Take.

3.4 Metering. Purchaser, at its sole cost and expense, shall install water meters at locations mutually agreed upon by District and Purchaser and of adequate size, calibration and volume to accurately measure the quantities of Qualified Water which Purchaser uses pursuant to this Agreement. District shall have the right to read such meters periodically. Purchaser shall have the right to read and/or inspect the meters at any time and from time to time and at such intervals as it determines are appropriate and District shall grant access to the meters whenever requested by Purchaser. Purchaser shall also have the right, at its sole cost, to have the meters tested from time to time and at any time during the Term, to determine if they are accurately recording the quantities of Qualified Water used by Purchaser. If any meter is determined by such a test to be operating inaccurately by more than the American Water Works Association standard variability for a functioning meter, District shall have such meter repaired or replaced at Purchaser's sole cost and expense.

### 3.5 Spring Water Quality.

3.5.1 Non-Qualified Water. Notwithstanding anything to the contrary contained in this Agreement, Purchaser shall have no obligation to take delivery of or pay for any Non-Qualified Water; provided, however, if Purchaser elects to use Non-Qualified Water for any purpose, Purchaser shall continue to pay the Purchase Price pursuant to Section 3.2 and the Exclusivity Fee pursuant to Section 3.7.1 as if such Non-Qualified Water so used were Qualified Water.

3.5.2 Determination of Non-Qualified Water; Reconciliation. Purchaser will (within seventy-two (72) hours after Purchaser's discovery of Non-Qualified Water) deliver notice, either in writing, or verbally followed by a writing, to District, of any claims that any Spring Water constitutes Non-Qualified Water, and as a result Purchaser has not been able to use Qualified Water up to the amount of the Maximum Take. Each such Non-Qualified Water notice will (i) state the legal deficiencies and/or the analytical and technical results of the applicable testing, (ii) specify the water quality standards that were not met, and (iii) state the date, time and meter reading when Purchaser first discovered the existence of Non-Qualified Water.

3.5.3 Sampling Procedures. Any claims of Non-Qualified Water based on water quality must be supported by samples taken from a well-designed sample port as close as reasonably possible to the collection point from which the Spring Water was extracted and prior to any treatment whatsoever, in order to eliminate the possibility of contamination from any source other than the applicable Spring source. At District's request, Purchaser will provide a confirmatory sample of the Non-Qualified Water to an independent, third-party laboratory mutually agreed upon by Purchaser and District. Such independent laboratory will test for the same constituent quality standards as tested by Purchaser. Purchaser will use its best efforts to reconcile discrepancies, if any, between the results contained in the applicable Non-Qualified Water notice and the results from the such independent laboratory. In the event of a discrepancy between the water quality sample results contained in the Non-Qualified Water notice and the testing results from such independent laboratory, District and Purchaser agree that for a period of sixty (60) days after receipt of the results from such independent laboratory both Purchaser and District will cooperate diligently and take affirmative steps to resolve the discrepancy by taking additional samples and/or conducting additional laboratory investigations. Because of the importance to Purchaser's business of its being

able to determine and enforce its strict quality standards, notwithstanding the results of, or attempts to reconcile any conflicting results with, the independent laboratory or District, Purchaser will make all final determinations, in its sole and absolute discretion, as to any and all claims that Spring Water is Non-Qualified Water. If District does not accept Purchaser's final determination, then either party may submit the dispute to arbitration under Section 9.7 of this Agreement. The issue in any such arbitration will be limited to (i) whether the Spring Water in question met Purchaser's Internal Standards, and if not (ii) whether the procedures applied by Purchaser in determining that such Spring Water is Non-Qualified Water have been applied uniformly and consistently to Purchaser's California spring water operations. The arbitrator in any such arbitration will not substitute his or her judgment for Purchaser's judgment as to the reasonableness or appropriateness of Purchaser's Internal Standards.

**3.5.4 Changes in Internal Standards.** Purchaser will provide District with thirty (30) days' prior written notice of any change in the Internal Standards. The notice will describe the change. Promptly after any such change has been implemented by Purchaser, Purchaser will provide District with notice to such effect and include documentation showing that such change has been applied uniformly and consistently throughout California. Purchaser shall also provide District with an annual written report setting forth the status of Internal Standards. Information and documentation provided to District under this Section 3.5.4 is for District's informational purposes only. Nothing in this Section 3.5.4 gives District any right, power or authority to alter or change, or to consent or object to, the Internal Standards, which shall at all times and from time to time during the Term be determined by Purchaser in its sole and absolute discretion..

**3.5.5 Confidential Information.** The Internal Standards, all analytical results of testing Spring Water and any and all information provided to District pursuant to Sections 3.5.2, 3.5.3 and/or 3.5.4 constitute, in whole and in part, confidential and sensitive proprietary business information of Purchaser. All such information shall be treated as confidential by District and afforded the maximum protection from public dissemination under the California Public Records Act.

**3.5.6 No Adverse Action.** District shall take no actions which will in any way impair the quality or quantity of Spring Water from the Springs.

**3.6 Licensing of Spring Water Sources.** Purchaser agrees to make all reasonable efforts to assist District in obtaining DHS spring water recognition and private source water operator licenses pursuant to California Health & Safety Code sections 111070 through 111195 for each of the Springs. Any cost incurred by District for this permitting process shall be reimbursed by Purchaser.

**3.7 Other Charges.**

**3.7.1 Exclusivity Fee.** Purchaser shall pay District an annual exclusivity fee (the "Exclusivity Fee") in consideration for District's covenant not to enter into negotiations or discussions with or permit any other person or entity to purchase or use any Spring Water for any purpose in competition with Purchaser's bottled water and beverage business. Subject to Sections 5.4.2 and 5.4.3, within thirty (30) days after the Operations Commencement Date and on each July 1<sup>st</sup> thereafter during the Term, Purchaser shall pay District an annual Exclusivity Fee according to the following schedule:

| <u>Exclusivity Payment Year</u> | <u>Annual Exclusivity Fee</u> |
|---------------------------------|-------------------------------|
| 1 through 5                     | \$150,000                     |
| 6 through 10                    | \$200,000                     |
| 10 through 25                   | \$250,000                     |

Beginning in the month of the 26<sup>th</sup> anniversary of the Operations Commencement Date and in the same month of the 25<sup>th</sup> year of the Term thereafter, the annual Exclusivity Fee hereunder will be adjusted to equal the product of (i) the Exclusivity Fee in effect on the last day of the immediately preceding 25-year period of the Term, and (ii) 1 plus a fraction, (a) the numerator of which equals the average monthly water service fee for a single family residence located in the District's service area based on the last twelve months of the immediately preceding 25-year period of the Term minus the average monthly water service fee for a single family residence located in the District's service area based on the first twelve months of the immediately preceding 25-year period of the Term, and (b) the denominator of which equals to the average monthly water service fee for a single family residence located in the District's service area based on the first twelve months of the immediately preceding 25-year period of the Term.

As an example, if the average monthly water service fee for a single family residence located in the District's service area during the 12 months preceding the end of the 25<sup>th</sup> year of the Term is \$22.50 per month and the average monthly water service fee for a single family residence for the first twelve (12) months of the immediately preceding 25-year period of the Term is \$17.60, then the Exclusivity Fee would be adjusted as follows:

$$\$250,000 \times [1 + [ (\$22.50 - \$17.60) / \$17.60 ]] = \$250,000 \times 1.28 = \$319,602$$

The first year Exclusivity Fee shall be calculated based on the number of full months remaining in the fiscal year (July 1 through June 30), at a rate of Twelve Thousand, Five Hundred (\$12,500) per month. For example, if the Operations Commencement Date begins on October 15, the first year Exclusivity Fee would be 8 (months remaining) x \$12,500 (per month) = \$100,000.

**3.7.2 Connection Fee.** Within thirty (30) calendar days after the Operations Commencement Date, Purchaser shall pay District a one-time water service connection fee equal to \$260,000.00. This connection fee represents District's standard water service connection fee (*i.e.*, \$1,300.00) based on Bottling Facility being assessed as 200 household equivalents.

**3.7.3 Exclusive Water Fees.** Except as expressly provided in this Article 3, Purchaser shall not be subject to any other charges, assessments or service fees for Qualified Water used by Purchaser to produce bottled water or other beverage products.

### **3.8 Other Spring Water Provisions.**

**3.8.1 Bulk Shipments From County.** District shall use its best efforts to obtain, or to assist Purchaser in obtaining, all permits, approvals and authorizations from Siskiyou County, pursuant to Siskiyou County Code § 3-13.301 and otherwise, as may be required to allow Purchaser to transport bulk Spring Water for bottling at Purchaser's other bottling facilities located in Northern

California. Notwithstanding anything in Section 3.1.1 to the contrary, nothing in this Agreement shall prevent Purchaser from exporting Spring Water to Purchaser's other bottling facilities after the Operations Commencement Date. Purchaser shall pay all reasonable costs and expenses incurred by District pursuant to this Section 3.8.1 and such obligation shall survive the termination of this Agreement.

**3.8.2 Bulk Shipments to Bottling Facility.** Purchaser shall have the right to transport bulk water from spring sources, other than the Springs, for bottling at the Bottling Facility if Purchaser determines, in Purchaser's sole discretion, that:

(i) Purchaser desires a higher quantity of spring water for Bottling Facility operations than is available under this Agreement and District is unable to meet such demand pursuant to Section 3.3;

(ii) At any time, the amount of Qualified Water available from the Springs is less than the Maximum Take; or

(iii) Purchaser requires a segregated spring water supply source for multiple product branding and District is unable to meet such requirement following a request submitted by Purchaser under Section 3.3.

**3.8.3 Exclusive Source and Segregated Sources.** Purchaser has the right to designate, in Purchaser's sole discretion, either Lower Elk Spring or Upper Elk Spring as an exclusive source for Spring Water which shall thereafter during the Term be dedicated exclusively to providing Spring Water to the Bottling Facility and/or Load Station in accordance with the terms of this Agreement, subject only to Purchaser's use of Spring Water, the Maximum Take limitations and the Contingency Plan. Any Spring Water from the Springs in excess of the amount used by Purchaser shall remain the property of District and District may use any such Spring Water for any lawful use not inconsistent with the limitations set forth in Section 3.1.3. Additionally, subject to Article 4, Purchaser has the right, in its sole discretion and at its sole cost and expense, to develop segregated collection and/or delivery systems to supply segregated and exclusive sources of Spring Water to Purchaser, which systems may include the Collection System, the New Delivery System and the Ancillary Facilities. Purchaser shall have the exclusive right, at any time and from time to time, to take Qualified Water from any of the such facilities subject only to the Maximum Take limitations and the Contingency Plan.

## ARTICLE 4 DESIGN, CONSTRUCTION AND OWNERSHIP OF FACILITIES

The design, construction, operation and ownership of the Collection System, the New Delivery System, the Ancillary Facilities and such other facilities, improvements and modifications to District's existing facilities, all as contemplated under this Agreement shall be governed by Schedule 1 attached hereto. Schedule 1 shall not apply to the design, construction, operation or ownership of the Bottling Facility or any facilities owned exclusively by Purchaser and located on land owned or controlled by Purchaser, which shall be designed, constructed, operated and owned by Purchaser, in Purchaser's sole discretion and at Purchaser's sole cost, subject only to normal governmental approvals and permitting requirements for other commercial/industrial projects located in District's service area. The Collection System and the New Delivery System shall be (i)

segregated from other water delivery and storage systems owned or operated by District, (ii) dedicated solely and exclusively to the storage and delivery of Spring Water for and to the Bottling Facility, and (iii) in accordance with Purchaser's requirements. Purchaser and District agree that Purchaser's review and approval of all plans and specifications for any such improvements are solely to protect Purchaser's interest and to assure systems that meet or exceed Purchaser's standards for cleanliness, purity and wholesomeness. Other than Purchaser's approvals and its obligation to pay for the costs of such improvements, District shall at all times be fully responsible for the design, construction and development of the Collection System, the New Delivery System and the Ancillary Facilities. Purchaser shall have no liability for any damage to the Springs as a result of District's construction activities and District shall indemnify and hold Purchaser harmless against any such damage.

## ARTICLE 5 TERM; TERMINATION; TEMPORARY DIVERSSIONS

5.1 Term. The term of this Agreement shall commence on the date hereof and shall, unless extended pursuant to Section 5.3 or terminated earlier pursuant to Section 5.2, terminate on the date that is the fiftieth (50<sup>th</sup>) anniversary of the Operations Commencement Date, subject to Section 9.21 (the "Initial Term").

5.2 Termination. Notwithstanding the provisions of Section 5.1, from and after the date that is the tenth (10<sup>th</sup>) anniversary of the Operations Commencement Date, Purchaser may terminate this Agreement at any time "for cause" by delivering to District written notice of such termination not less than one (1) year in advance of the termination date selected by Purchaser. For purposes of this Section 5.2, "for cause" means any reason other than Purchaser's development of alternate spring water sources for the specific purpose of replacing Spring Water as a source of Qualified Water for bottling or marketing as a spring water product or any other beverage product. Upon termination of this Agreement, neither party shall have any further obligation to the other, except for obligations incurred prior to the date of termination or obligations arising under provisions of this Agreement which expressly survive the termination hereof. In no event shall Purchaser be obligated to restore the Springs, the Collection System, the New Delivery System or the Ancillary Facilities to any pre-Agreement condition or return the Project, or any portion thereof, to its pre-Agreement condition.

5.3 Renewal. Purchaser shall have a guaranteed right to extend the term of this Agreement for one (1) additional term of fifty (50) years (the "Renewal Term"). This Agreement shall automatically be extended for the Renewal Term unless Purchaser provides written notice to District of Purchaser's intention to terminate this Agreement at least one year prior to the end of the Initial Term, or unless sooner terminated pursuant to Section 5.2. In the event Purchaser elects to extend the Term, the terms and conditions provided in this Agreement shall apply to the Renewal Term. In the event Purchaser does not elect to extend the term of this Agreement, this Agreement shall terminate at the end of the Initial Term without further obligation of either party to the other. Purchaser shall have an additional option to extend the term of this Agreement beyond the Renewal Term for additional terms of fifty (50) years each, subject to renegotiation with District of the terms and conditions of any such additional terms.

#### 5.4 Diversions.

5.4.1 Excess Water. At all times during the Term, Purchaser shall divert to District all Spring Water not used by Purchaser and, subject to Section 3.1.3, District shall have the right to use all Spring Water in excess of the amounts used by Purchaser.

5.4.2 Non-Qualified Water. If, at any time or times during the Term, District is not able to provide Qualified Water to Purchaser as determined in accordance with Section 3.5, then (i) notwithstanding Section 3.2, the Purchase Price otherwise payable under this Agreement shall be prorated each month to reflect the reduction in actual Qualified Water used per day by Purchaser for each month in which Qualified Water is not available as compared to Purchaser's usage of Qualified Water in the most recent month in which Qualified Water was fully available, and (ii) notwithstanding Section 3.7.1, if such failure to provide Qualified Water to Purchaser continues for a period of thirty (30) consecutive days or more, Purchaser shall be entitled to a credit equal to the product (rounded to the nearest dollar) of (x) the amount of the next scheduled Exclusivity Fee, and (y) a fraction, the numerator of which is the total number of days of such failure and the denominator of which is 365. Such credit shall be applied towards Purchaser's obligation to make the next annual payment of the Exclusivity Fee pursuant to Section 3.7.1.

5.4.3 Shortage of Qualified Water. If, at any time or times during the Term, District is not able to provide, for any reason, Qualified Water to Purchaser in sufficient quantities to meet Purchaser's demand therefor up to the Maximum Take, then upon delivery of written notice to District, (i) notwithstanding Section 3.2, the Purchase Price otherwise payable under this Agreement shall be prorated each month to reflect the reduction in actual Qualified Water used per day by Purchaser for each month that such water shortage exists, compared to Purchaser's usage of Qualified Water in the most recent month in which Qualified Water was fully available, and (ii) notwithstanding Section 3.7.1, if such shortage continues for a period of thirty (30) consecutive days or more, Purchaser shall be entitled to a credit against the next annual Exclusivity Fee in a prorated amount computed as the reduction in actual Qualified Water used per day by Purchaser for each month that the Qualified Water shortage exists compared to Purchaser's usage of Qualified Water in the most recent month for which Qualified Water was fully available.

#### 5.4.4 Termination by District for Cause.

(i) Prolonged Diversions. Subject to Section 9.21, if Purchaser diverts all of the Spring Water to District and makes no payments under this Agreement to District for a period of twelve (12) consecutive months, District shall have the right to terminate this Agreement by delivering sixty (60) days' prior written notice of such termination to Purchaser; provided, however, that if Purchaser makes an annual McCloud-Arrowhead Community Enhancement Program contribution (as provided in Section 9.3) within such 60-day period, (A) the effect of District's notice of termination shall be extended for a period of three (3) years after such 60-day period, (B) Purchaser shall be required to make MACEP payments for each of the last two (2) years of such three-year extension as and when provided in Section 9.3, and (C) this Agreement will automatically terminate at the end of such three-year extension period unless Purchaser, at any time during such three-year extension period, commences making all payments under this Agreement as and when due, in which event District's notice of termination shall thereafter be of no further force or effect and this Agreement shall continue in full force and effect.

(ii) Prolonged Delay in Construction. Subject to Section 9.21, if Purchaser has not completed construction of the Bottling Facility prior to the seventh (7<sup>th</sup>) anniversary of the Effective Date, then District shall have the right to terminate this Agreement by delivering one hundred eighty (180) days' prior written notice of such termination to Purchaser. If Purchaser commences construction of the Bottling Facility within such 180-day period, District's written notice of termination shall be deemed withdrawn and of no force or effect and this Agreement shall continue in full force and effect. Notwithstanding the foregoing, if Purchaser immediately commences payment of the Purchase Price, the Exclusivity Fee and the MACEP contributions pursuant to the terms of this Agreement as of the written notice of termination, District's notice of termination shall be deemed withdrawn and of no force or effect for a period of up to three (3) additional years. If the Operations Commencement Date has not occurred within ten (10) years of the Effective Date of this Agreement, District shall have the right to terminate this Agreement by delivering sixty (60) days written notice of such termination to Purchaser.

## ARTICLE 6

### OPERATION AND MAINTENANCE EXPENSES; OTHER OPERATING ISSUES

6.1 Operation and Maintenance Expenses. District shall, at the expense of Purchaser, operate and maintain the Collection System, the New Delivery System and the Ancillary Facilities in a good and workman-like manner in accordance with Purchaser's requirements and the O&M Budget. Purchaser shall reimburse District for the actual and reasonable costs solely attributable to the operation and maintenance of the Collection System, the New Delivery System and Ancillary Facilities on a quarterly basis; provided, that such reimbursement obligation shall not exceed the aggregate amount set forth in the O&M Budget for all such activities, unless prior written approval of Purchaser is obtained. The operation and maintenance expenses reimbursed to District by Purchaser pursuant to this paragraph are agreed by the parties hereto to constitute consideration paid by Purchaser to District for District's dedication of exclusive use of the Collection System, New Delivery System, and the Ancillary Facilities to Purchaser pursuant to the terms of this Agreement, since District does not collect reimbursements from any of its other customers for the operation and maintenance expenses of its water distribution facilities. The O&M Budget, and Purchaser's reimbursement obligations hereunder, shall include, without limitation, all costs of personnel, materials, supplies and equipment (including capital equipment and replacement costs for same) which are provided, purchased, leased or otherwise contracted for by District solely with respect to the operation and maintenance of the Collection System, the New Delivery System and the Ancillary Facilities, including the reasonable costs associated with the reasonable time of District's employees in accomplishing the operation and maintenance of such facilities and a pro rata portion of the periodic maintenance of any necessary access road or roads solely attributable to the operation and/or maintenance of the Collection System and/or the New Delivery System. District shall bill Purchaser for such operation and maintenance expenses for each quarter by delivering a bill therefor to Purchaser together with such detail and supporting documentation as may be reasonably requested by Purchaser by the 15th day of the first month of the succeeding quarter. Purchaser shall pay to District the amount included in each such bill no later than the 30th day following its receipt of the invoice. Purchaser shall have the continuous right to inspect, monitor and test any portion of the Collection System, the New Delivery System and the Ancillary Facilities and to direct the District to make changes, upgrades or repairs to those systems, in Purchaser's sole and absolute discretion and at Purchaser's sole cost and expense. Purchaser shall also be obligated to reimburse District for costs in excess of the O&M Budget solely due to unforeseeable emergency repairs to the Collection System, the New Delivery System and/or the Ancillary Facilities; provided, however, that such

emergency repairs shall not include capital replacements without Purchaser's prior written consent; and, provided, further, that District delivers to Purchaser prompt verbal notice of the event giving rise to such emergency repairs with written notice of such event and the cost justification for such repairs to follow soon thereafter.

## 6.2 Sewer Services.

6.2.1 Monthly Fees. Purchaser shall pay a monthly sewer service fee to District in connection with domestic or sanitary waste streams emanating from the Bottling Facility. The monthly sewer service fee shall be determined according to the Fixture Count User Classification in accordance with District Ordinance No. 15, Rules and Regulations Relating to Sewers and Sewage Disposal. If at any time during the Term, District changes the method of pricing for sewer services for all of its customers and such pricing is no longer based on the Fixture Count User Classification, the sewer service fees charged to Purchaser shall nonetheless continue to be calculated and paid on the same basis as similar classifications of industrial or similar commercial customers, with any increases or decreases in sewer service fees adopted by District being applied to Purchaser at the same rate of change in such sewer service fees as is applied to all of the District's industrial and/or commercial customers.

6.2.2 Service Connection Fee. Within thirty (30) calendar days after the Operations Commencement Date, Purchaser shall pay District a one-time sewer service connection fee equal to \$27,300.00 in connection with its domestic sewage discharge. This connection fee represents District's standard sewer service connection fee (*i.e.*, \$1,300.00) based on the Bottling Facility being assessed as 21 household equivalents.

6.2.3 Post-Design Adjustment. The household equivalent multiplier used to determine the sewer service connection fee under Section 6.2.2 is subject to adjustment by mutual agreement of Purchaser and District based on the final design of the Bottling Facility.

6.2.4 Sewer Assessment. Within thirty (30) calendar days after the Operations Commencement Date, Purchaser shall pay District a one-time assessment pursuant to Resolution No. 14, 1996 ("Resolution Overruling Protests, Approving Amended Engineer's Report, Levying Assessments and Ordering Improvements"), adopted by District on July 15, 1996.

## 6.3 Process Waste Water.

6.3.1 On-Site Disposal. Purchaser shall have the right, but not the obligation, to dispose of its process waste water generated by the operation of the Bottling Facility on site, at Purchaser's sole cost and expense, provided such disposal complies with all applicable laws and regulations. If Purchaser elects to dispose of the process waste water on site, then Purchaser shall have no obligation to pay, and District shall have no right to receive, any fees, charges or other payments related to the disposal of such process waste water.

6.3.2 Disposal by District. If Purchaser elects not to dispose of the process waste water on the Project Site, then District shall dispose of the process waste water and Purchaser shall pay fees and cover other expenses of District as follows:

- (i) Monthly Fees. Purchaser shall pay a monthly sewer service fee to

District in connection with process waste water emanating from the Bottling Facility. This fee shall be in addition to the fee set forth in Section 6.2.1. This monthly sewer service fee shall be equal to the monthly HE Rate for sewer service multiplied by two hundred (200). (For illustration purposes, as of the date hereof, the HE Rate for sewer is \$32.60 per household equivalent. Therefore, if the Bottling Facility commenced operations as of the date hereof, the monthly sewer fee would be equal to \$32.60 multiplied by 200 or \$6,520.00 per month.) This sewer service fee represents District's standard monthly sewer fee (*i.e.*, \$32.60) based on the Bottling Facility being assessed as 200 household equivalents. If at anytime during the Term, District changes the method of pricing for monthly sewer service fees in connection with process waste water for all of its process waste water customers and such pricing is no longer based on the HE Rate, or, in the alternative, if the HE Rate increases or decreases during the Term, the monthly sewer service process waste water fee shall nonetheless continue to be calculated and paid on a HE Rate basis, with any increases or decreases in such sewer service fees adopted by District being applied to Purchaser at the same rate of change in such sewer service process waste water fees as is applied to all of the other District's industrial/commercial customers.

(ii) Service Connection Fee. Within thirty (30) calendar days after the Operations Commencement Date, Purchaser shall pay District a one-time sewer service connection fee equal to \$260,000.00 in connection with its process waste discharge. This connection fee represents District's standard sewer service connection fee (*i.e.*, \$1,300.00) based on the Bottling Facility being assessed as 200 household equivalents.

(iii) Mitigation Costs. Purchaser shall reimburse District for the capital costs incurred by District to upgrade and/or expand District's waste collection and treatment facilities to accommodate the increased waste stream caused by District's handling of the process waste water from the Bottling Facility. Such upgrades shall be completed so as to match the increased demand resulting from the operation and projected growth of the Bottling Facility. The scope and extent of the upgrades and the terms and conditions of the reimbursements contemplated under this section shall be determined by separate agreement between Purchaser and District and shall not be governed by Schedule 1.

6.4 Ground Water Wells. At Purchaser's request, District shall design, construct and install one or more ground water production wells on the Bottling Facility site for Purchaser's use as a supply for non-spring water purposes. Purchaser will reimburse District for all costs of designing, constructing and installing any such ground water wells. Furthermore, Purchaser will pay any fees or costs to obtain any necessary licenses or make any regulatory filings to necessary or desirable for Purchaser's use of water from such ground water wells. District shall own any ground water wells installed pursuant to this Section 6.4. District shall have a right of first refusal to supply ground water to the Bottling Facility for drinking water or other beverage production purposes. The amount of water Purchaser uses from the ground water wells pursuant to this Section 6.4 shall not be included, in any event, in the calculation of the Maximum Take. Purchaser shall pay District for ground water on a metered basis at an industrial rate equal to District's standard Golf Course Irrigation Rate as such rate may be adopted or modified by District from time to time. Purchaser shall pay the monthly cost of maintenance and operation of such ground water wells in addition to the metered industrial rate. Any ground water well constructed by District pursuant to the provisions of this paragraph shall be for the exclusive use of Purchaser, subject to the Contingency Plan. Purchaser shall be entitled to use such ground water wells solely for the production of drinking water products or other products utilizing drinking water, and not for production of Spring Water.

Purchaser shall only be allowed to utilize the Ground Water Wells to produce such drinking water products during such time as Purchaser is taking Qualified Water; provided, however, nothing will prevent Purchaser from continuing to take ground water from the Ground Water Wells during any period in which the Springs are not delivering Qualified Water.

#### 6.5 Domestic Water Services.

6.5.1 Monthly Fees. Purchaser shall pay a monthly water service fee to District in connection with domestic water supply provided by District to the Bottling Facility. The monthly water service fee shall be equal to the monthly HE Rate for water multiplied by one (1) or if District elects, such monthly water service fee may be based on a metered water rate as the same is applied to all of the District's industrial and/or commercial customers.

6.5.2 Service Connection Fee. Within thirty (30) calendar days after the Operations Commencement Date, Purchaser shall pay District a one-time water service connection fee equal to \$1,300.00 in connection with its domestic water use at the Bottling Facility. This connection fee represents District's standard water service connection fee (*i.e.*, \$1,300.00) based on the Bottling Facility being assessed as 1 household equivalent).

6.5.3 Post-Design Adjustment. The household equivalent multiplier used to determine the water service and water connection fees for domestic water under this Section 6.5 is subject to adjustment by mutual agreement of Purchaser and District based on the final design of the Bottling Facility.

6.5.4 No Effect on Maximum Take. The amount of water Purchaser uses for domestic uses in the Bottling Facility under this Section 6.5 shall not be included, in any event, in the calculation of the Maximum Take.

6.5.5 Metering. Purchaser, at its sole cost and expense, shall, prior to commencing Bottling Facility operations, install meters satisfactory to District and of adequate size, calibration and volume to accurately measure the quantities of domestic water which Purchaser receives pursuant to this Section 6.5.

6.6 Other District Services. Provided the Bottling Facility is located within the District's service area, as such service area may be expanded as contemplated under Section 9.2, and except as otherwise provided in Sections 3.7.3, 6.2, 6.3, 6.4 and 6.5, District shall provide services to Purchaser, and Purchaser shall be a customer of District, for all services normally provided by District to customers in District's service area (including fire, ambulance, parks, libraries and street lighting) consistent with District's standard fees, rates, taxes or charges as the same be adopted or modified by District from time to time.

6.7 Billing and Payment. All recurring service fees, charges and connection fees to be paid by Purchaser under this Agreement shall be invoiced by District and paid by Purchaser in accordance with District's standard billing practices and procedures.

6.8 Water Supply Contingency Plan. Purchaser and District shall, during the Contingency Period, jointly develop a water supply contingency plan (the "Contingency Plan") to address foreseeable contingencies in the event of fires, drought, earthquake, other natural disasters and other

emergencies that may impact Purchaser's ability to purchase Spring Water as contemplated under this Agreement or District's ability to provide water to its customers or perform other District functions. Purchaser shall cooperate with District to identify additional sources of water supply for District's residential, municipal and industrial customers.

6.9 Designated Roads. Purchaser and District shall, during the Contingency Period, jointly develop a road use plan that will identify primary truck routes to be used by Purchaser for transporting bulk water and bottled water products to and from the Bottling Facility and other facilities used by Purchaser under this Agreement. To the maximum extent practicable, such road use plan will minimize Purchaser's use of local streets within District's service area and, instead, maximize use of designated "haul roads" and State Highway 89. If the scope and purpose of such road use plan is addressed as part of the CEQA documentation prepared for the Project, the preparation of a separate road use plan will not be required.

## ARTICLE 7 REPRESENTATIONS AND WARRANTIES

7.1 Purchaser's Representations and Warranties. Purchaser hereby represents and warrants that Purchaser has all requisite authority and power to enter into and perform this Agreement, and is not subject to any other agreements, restrictions, easements or other legal requirements which would prevent Purchaser from entering into and performing its obligations under this Agreement, and is in good standing as a corporation under the laws of the State of Delaware and is qualified to do business in the State of California.

7.2 District's Representations and Warranties. District hereby represents and warrants as follows:

7.2.1 Authority; Compliance. District (i) has all requisite authority, power and capacity to enter into and perform this Agreement; and (ii) is not precluded by any agreement, oral or written, or by any law, regulation, restriction or other legal requirement, from entering into and fulfilling District's obligations under this Agreement.

7.2.2 Water Rights. District has the rights to (i) extract water from the Springs; (ii) develop, collect and/or transmit the Spring Water to its system; and (iii) sell the Spring Water to Purchaser as provided in this Agreement. District shall, at its sole cost and expense, take whatever legal action is reasonably necessary to protect and defend the foregoing rights; provided, however, that if any such legal action occurs as a direct result of this Agreement, Purchaser shall share all costs of such legal action with District on an equal basis; provided, further, that Purchaser's obligation under this Section 7.2.2 shall not exceed \$100,000.00 in the aggregate without the prior written consent of Purchaser.

7.2.3 Hazardous Materials. To the District's knowledge, there has not been any spill, disposal, discharge or release of any hazardous materials into, upon or from the property on which the Springs are located or into or upon the Springs.

7.2.4 Actions. There are no actions, suits or proceedings pending against or, to the best of District's knowledge, threatened or affecting the Springs and/or the property on which the Springs are located, whether at law or in equity. There are no claims challenging the right of District

under its existing licenses and easements to transmit the water from the Springs and into its system.

## ARTICLE 8 DEFAULTS/REMEDIES

8.1 Purchaser Defaults. The occurrence of any one or more of the following events shall constitute a material default and breach of this Agreement by Purchaser:

8.1.1 The failure by Purchaser to make any payment required to be made by Purchaser hereunder, as and when due, where such failure shall continue for a period of thirty (30) days after written notice thereof from District.

8.1.2 The material failure by Purchaser to observe or perform any of the material covenants, conditions or provisions of this Agreement to be observed or performed by Purchaser, other than described in Section 8.1.1, where such material failure shall continue for a period of sixty (60) days after written notice thereof from District; provided, however, that if the nature of Purchaser's default is such that more than sixty (60) days are reasonably required for its cure, then Purchaser shall be deemed not to be in default if Purchaser commenced such cure within said 60-day period and thereafter diligently prosecutes such cure to completion.

8.1.3 The filing by Purchaser of a voluntary petition in bankruptcy, or the filing of an involuntary petition in bankruptcy against the Purchaser which petition shall not have been withdrawn within sixty (60) days, or assignment by the Purchaser for the benefit of creditors, or the entry by Purchaser into an agreement of composition with creditors; or the approval by a court of competent jurisdiction of a petition applicable to the Purchaser in any proceedings instituted under the provisions of the U.S. Bankruptcy Code, or under any similar acts which may hereafter be enacted.

8.2 District Defaults. The occurrence of the following shall constitute a material default and breach of this Agreement by District:

8.2.1 The material failure by District to observe or perform any of the material covenants, conditions or provisions of this Agreement to be observed or performed by District where such material failure shall continue for a period of sixty (60) days after written notice thereof from Purchaser; provided, however, that if the nature of District's default is such that more than sixty (60) days are reasonably required for its cure, then District shall be deemed not to be in default if District commenced such cure within said 60-day period and thereafter diligently prosecutes such cure to completion.

8.3 Remedies. In the event of a default under this Agreement by a party hereto, the non-defaulting party shall have all rights and remedies afforded it at law and/or in equity.

## ARTICLE 9 GENERAL PROVISIONS

9.1 CEQA Compliance. District and Purchaser acknowledge and agree that the obligations of the parties under this Agreement are conditioned on District and Purchaser completing, during the Contingency Period, proceedings under CEQA in connection with the

Project, and the expiration of the applicable period for any challenge to the adequacy of District's and Purchaser's compliance with CEQA without any challenge being filed. Purchaser shall reimburse District for the reasonable costs of complying with CEQA, including administrative costs and the cost of litigation defense, but not including costs attributable to District's negligence. Purchaser shall select a qualified environmental consultant acceptable to District to prepare the underlying documentation for District's review and consideration as may be required by CEQA and applicable law. Purchaser shall direct the qualified environmental consultant and both Purchaser and the environmental consultant shall coordinate the preparation of the environmental analysis with District to ensure a full, fair and complete consideration of potential environmental impacts. Any documentation submitted by Purchaser shall be sufficient for District to make a fair decision in accordance with applicable law. In addition to its obligation to reimburse District for its costs incurred in processing the environment review, Purchaser shall also have the right but not the obligation to assume the defense of District in any challenge to a potential approval of the Load Station, the Collection System, the New Delivery System, the Ancillary Facilities or the Bottling Facility or the adequacy of environmental review. District has no obligation to defend against any CEQA challenge for which Purchaser fails to defend and pay all costs. District shall cooperate with Purchaser in any such defense. District and Purchaser acknowledge that any modifications to the Load Station, the Collection System, the New Delivery System, the Ancillary Facilities or the Bottling Facility resulting from District's compliance with CEQA may necessitate amendments to this Agreement in a mutually acceptable manner. Neither party shall be bound hereby unless and until District's compliance with CEQA is completed and there is no possibility of a challenge pursuant to CEQA.

9.2 Annexation. Purchaser will attempt to locate the Bottling Facility within District's existing service area. However, Purchaser and District acknowledge that Purchaser's business needs may require that the Bottling Facility, or any portion thereof, be located on land situated outside the District's existing service area. In such case, District shall prosecute diligently the annexation of such area into District's service area and Purchaser shall, to the maximum extent practicable, take all reasonable steps to assist District with such annexation. Purchaser shall reimburse District for the proportionate costs of the annexation, not to exceed \$6,000.00 in the aggregate, attributable to the land required for the Project and such costs shall be allocated to Purchaser in the same proportion that the number of square feet of the land required for the Project (and subject to the annexation) bears to the total number of square feet of all land submitted as part of such annexation.

9.3 McCloud-Arrowhead Community Enhancement Program. Purchaser recognizes and values the importance of community development in District's service area and has agreed to establish and fund (as described below) the McCloud-Arrowhead Community Enhancement Program ("MACEP") as a means to support and promote community development and quality of life in the McCloud community. As evidence of Purchaser's commitment to the McCloud community, Purchaser agrees that MACEP payments under this Section 9.3 shall not be subject to offset, reduction or abatement during the Term. Use of the MACEP funds will be determined in accordance with District's policies and procedures.

Within forty-five (45) days after the earlier of (i) the Closing Date, and (ii) the fifth (5<sup>th</sup>) anniversary of hereof, Purchaser shall establish and provide \$100,000 in initial funds to the MACEP which shall be maintained as a segregated account held in District's name to provide a source of funding for capital expenditures and other expenditures (such as, without limitation, funding improvements to parks, recreation facilities and community centers, purchasing scholastic and

sports-related equipment for schools, sponsoring community events and acquiring fire suppression and emergency services equipment for use by District) that enhance the quality of life of the residents in District's service area, and which, upon payment thereof, shall be deemed fully earned by District and non-refundable to Purchaser. Within forty-five (45) days of each annual anniversary date of the Closing Date during the Term, Purchaser shall contribute \$100,000 to the MACEP which, upon payment thereof, shall be deemed fully earned by District and non-refundable to Purchaser.

#### 9.4 Indemnification.

9.4.1 By Purchaser. Purchaser hereby agrees to indemnify, defend and hold District, its successors, assigns, subsidiaries, directors, officers, agents and employees harmless from and against any and all damage, loss, liability or expense including, but not limited to, actual, reasonable and documented attorney's fees and legal costs suffered by same directly or by reason of any claim, suit or judgment brought by or in favor of any person or persons for damage, loss or expense due to, but not limited to, bodily injury, including death resulting anytime therefrom, and property damage sustained by such person or persons which arises out of, is occasioned by or attributable to Purchaser's operation, use or occupancy of the Bottling Facility or Project Site or the acts or omissions of Purchaser, its agents, employees or any contractors hired by Purchaser to perform work on the Project Site. If any action or proceeding is brought against District by reason of any such claim, Purchaser, upon notice from District, shall defend same at Purchaser's expense by counsel satisfactory to District. The terms of this Section 9.4.1 shall survive the expiration or earlier termination of this Agreement.

9.4.2 By District. District hereby agrees to indemnify, defend and hold Purchaser, its successors, assigns, subsidiaries, directors, officers, agents and employees harmless from and against any and all damage, loss, liability or expense including, but not limited to, actual, reasonable and documented attorney's fees and legal costs suffered by same directly or by reason of any claim, suit or judgment brought by or in favor of any person or persons for damage, loss or expense due to, but not limited to, bodily injury, including death resulting anytime therefrom, and property damage sustained by such person or persons which arises out of, is occasioned by or attributable to the acts or omissions of District, its agents, employees or any contractors hired by District to perform work pursuant to this Agreement or otherwise. If any action or proceeding is brought against Purchaser by reason of any such claim, District, upon notice from Purchaser, shall defend same at District's expense by counsel satisfactory to Purchaser. The terms of this Section 9.4.2 shall survive the expiration or earlier termination of this Agreement.

#### 9.5 Insurance.

##### 9.5.1 Casualty Insurance.

(i) Required Policies. Purchaser shall obtain and maintain, at all times during the Term, a policy of fire and casualty insurance with extended coverage provisions applicable to the Bottling Facility and all components of the Project to be owned by Purchaser or located on land owned by Purchaser as contemplated under this Agreement in the amounts and coverages that are regularly maintained by Purchaser in the normal course of business, and including the replacement cost of such facilities and improvements. Purchaser shall bear its own costs of such insurance. District shall obtain and maintain at all times during the Term a policy of fire and casualty insurance with extended coverage provisions applicable to the Collection System, the New

Delivery System, the Ancillary Facilities, and all other facilities and improvements contemplated under this Agreement which are to be owned by District or located on property owned by District in the amounts and coverages that are regularly maintained by District in the normal course of business, and including the replacement cost of such facilities and improvements. District shall bear its own costs of such insurance.

(ii) Covered Events; Application of Proceeds. In the event that any portion of the Project is damaged or destroyed in whole or in part by fire, earthquake, flood, or any other casualty or peril and such event is insured against by any of Purchaser's insurance policies required under this Agreement, Purchaser shall, at its election, either (A) collect the proceeds from its policies and apply them to the rebuilding and repair of the damaged or destroyed portion of the Project, in which case this Agreement shall remain in full force and effect, or (B) (1) if such event occurs prior to the tenth (10<sup>th</sup>) anniversary of the Operations Commencement Date, not rebuild or repair the Project, or any portion thereof, in which case Purchaser shall make all payments that would otherwise be required under this Agreement (as if no such event had occurred and Qualified Water was available) until the tenth (10<sup>th</sup>) anniversary of the Operations Commencement Date at which time this Agreement shall automatically terminate pursuant to Section 5.2 (without any requirement to give notice of such termination by Purchaser), or (2) if such event occurs after to the tenth (10<sup>th</sup>) anniversary of the Operations Commencement Date, not rebuild or repair the Project, or any portion thereof, in which case this Agreement shall automatically terminate pursuant to Section 5.2 (without any requirement to give notice of such termination by Purchaser). At any time that Purchaser elects to repair or rebuild the Project, or any portion thereof, pursuant to the foregoing clause (A), District shall collect the proceeds from its policies and apply them to the rebuilding and repair of the damaged or destroyed portion of the Project and, in such event, if the net proceeds of Purchaser's and District's insurance policies are insufficient, Purchaser will fund the cost of the repair and/or replacement of the damaged or destroyed components of the Project in excess of the amounts of insurance proceeds available.

9.5.2 General Liability Insurance. Each party hereto shall, at all times during the Term, keep in full force and effect a policy of general liability insurance with respect to the facilities and improvements owned by such party and the business or operations undertaken by such party, and the limits of liability for such policy shall not be less than Two Million Dollars (\$2,000,000.00), single limit coverage.

9.5.3 Worker's Compensation. Each party hereto shall maintain worker's compensation insurance in the statutorily required amounts.

9.5.4 Evidence of Insurance. Each party hereto shall deliver to the other party certificates of insurance or other acceptable evidence, and all renewals thereof, evidencing that the insurance required under this Agreement is in force at all times during the Term. With respect to policies required under Sections 9.5.1 and 9.5.2, each party shall cause the other party to be carried as an "additional insured" under each such policy.

9.5.5 Waiver of Subrogation Rights Under Insurance Policies. Notwithstanding anything to the contrary contained in this Agreement, each of the parties hereto releases the other to the extent of each party's insurance coverage from any and all liability for any loss or damage which may be inflicted upon the property of such party even if such loss or damage shall be brought about by the fault or negligence of the other party, or its agents, employees or assigns; and each party

hereto waives any right of subrogation; provided, however, that this release shall be effective only with respect to loss or damage occurring during such time as the appropriate policy of insurance shall contain a clause to the effect that this release shall not affect the policy or the right of the insured to recover thereunder, and the parties shall endeavor to obtain policies of insurance containing such clauses.

9.6 Good Faith. The parties acknowledge and agree that this Agreement is subject to the covenant of good faith and fair dealing.

9.7 Arbitration; Legal Fees. All disputes of any nature whatsoever arising out of this Agreement or in connection with the underlying transactions, including but not limited to negotiation or termination of this Agreement, shall be resolved by binding arbitration. The arbitration shall be governed by the rules of practice and procedure for the arbitration of commercial disputes of Judicial Arbitration and Mediation Services, Inc./Endispute, Inc. (“JAMS/Endispute”). JAMS/Endispute shall serve as the arbitrator and the arbitration shall be conducted by JAMS/Endispute in San Francisco, California. If JAMS/Endispute is precluded from serving, then the American Arbitration Association will act as arbitrator and conduct the arbitration in San Francisco, California. The parties agree that neither party shall be entitled to request or recover punitive, exemplary, treble or any other similar form of damages against the other, regardless of the claims raised. In the event of the bringing of any arbitration action by either party against the other party to this Agreement by reason of any breach of any of the covenants, conditions, agreements or provisions on the part of such other party arising out of this Agreement, the party in whose favor final judgment shall be entered shall be entitled to have and recover of and from the other party its actual and reasonable costs and expenses of the arbitration, including reasonable attorneys’ fees (or, in the event of any arbitration action to enforce this Agreement, the prevailing party shall be entitled to recover all of its costs and expenses of the action, including reasonable attorneys’ fees), as determined by the arbitrator.

9.8 Notices. Except as otherwise specified herein, all notices or other communications provided for in this Agreement shall be in writing, and shall be delivered personally, sent by reputable overnight courier service, sent by facsimile or sent by registered or certified mail, return receipt requested and postage prepaid, addressed to the person to receive such notice or communication at the following addresses:

If to Purchaser: Nestlé Waters North America Inc.  
2051 Hilltop Dr., #A-20  
Redding, CA 96002  
Attention: Natural Resource Manager  
Telephone: (909) 390-0925  
Facsimile: (909) 390-2258

With a copy to: Nestlé Waters North America Inc.  
777 West Putnam Avenue  
Greenwich, CT 06830  
Attention: Vice President and General Counsel  
Telephone: (203) 863-0438  
Facsimile: (203) 863-0250

Such notices or communications shall be effective (i) if mailed, upon the earlier of (a) three (3) business days after mailing, or (b) actual receipt as evidenced by the return receipt, (ii) if sent by overnight courier service with all fees prepaid, the next business day, (iii) if sent by facsimile, when sent, or (v) if personally delivered, when delivered. Notwithstanding the foregoing, notices of default (given pursuant to Article VIII) may not be given by facsimile. Copies of any notice of default (given pursuant to Article VIII) shall, in addition to being delivered as set forth above, be delivered to:

If notice is to District: McMurchie, Weill, Lenahan, Lee, Slater & Pearse, LLP  
1030 15th Street, Suite 300  
Sacramento, CA 95814  
Attention: David W. McMurchie, Esq.

If notice is to Purchaser: Sonnenschein Nath & Rosenthal LLP  
601 South Figueroa Street, Suite 1500  
Los Angeles, California 90017  
Attention: Robert M. Johnson, Esq.

Notice of change of address shall be given by written notice in the manner set forth in this Section.

9.9 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective heirs, executors, administrators, successors and assigns. Purchaser shall have the right to assign its rights or delegate any of its obligations or duties under this Agreement to (i) its parent company or any subsidiary, affiliate or successor of Purchaser without District's consent, or (ii) any other person or entity upon District's prior written consent, which consent shall not be unreasonably withheld. Any assignment or transfer of this Agreement by District without Purchaser's prior written consent shall be void. As used herein, "affiliate" means any entity controlling, controlled by or under common control with Purchaser.

9.10 Required Actions. District and Purchaser agree to execute all reasonable instruments and documents and to take all reasonable actions as may be required in order to consummate the transactions contemplated by this Agreement.

9.11 Access.

9.11.1 At any reasonable time and from time to time during the Contingency Period, in accordance with the access protocols set forth in Exhibit B hereto, Purchaser and its consultants shall have access to the Springs and surrounding areas owned, possessed, operated or managed by District and to District's other property and to the Collection System, the New Delivery System and

the Ancillary Facilities as may be necessary, in Purchaser's good faith judgment, to carry out the purposes of this Agreement. In carrying out the purpose and intent of this Section 9.11.1, Purchaser and District shall abide by the access protocols. Further, Purchaser and District agree to conduct joint training of their respective employees from time to time during the Term in order to fully and effectively implement the access protocols.

9.11.2 District shall make available to Purchaser and its counsel, accountants, agents, consultants, employees, and representatives all of District's books, records, properties, agents and consultants for the purpose of reviewing and analyzing the Springs and the Spring Water and related property rights. District shall disclose to and inform Purchaser of all information known to District concerning the Springs and Spring Water, including, without limitation, quality, quantity, contamination in the soils, waters or properties of District, and any investigations to determine the existence of any such contamination and the result of any such studies conducted within the last five years.

9.12 Entire Agreement. This Agreement contains the entire agreement between the parties concerning the subject matter of this Agreement and supersedes any prior agreements, understandings or negotiations (whether oral or written). No addition or modification of any term or provision shall be effective unless set forth in writing and signed by District and Purchaser.

9.13 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

9.14 Severability. If any portion of this Agreement shall be declared by any arbitrator or any court of competent jurisdiction to be invalid, illegal or unenforceable, such portion shall be deemed severed from this Agreement, and the remaining parts of this Agreement shall remain in full force and effect, as fully as though such invalid, illegal or unenforceable portion had never been part of this Agreement.

9.15 Headings. Headings at the beginning of each section and subsection are solely for convenience of reference and are not a part of this Agreement.

9.16 Construction. Whenever the context of this Agreement requires the same, the singular shall include the plural and the masculine, feminine and neuter shall include the others. Without limitation, any defined term used in the plural shall refer to all members of the relevant class, and any defined term used in the singular shall refer to any member of the relevant class. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties had prepared it. Unless otherwise indicated, all references to sections and subsections are to this Agreement. The words "include", "includes" and "including" shall not be limiting, and shall be deemed in all instances to be followed by the phrase "without limitation". All exhibits and schedules are incorporated in this Agreement by reference, and the term "Agreement" includes such exhibits and schedules. If the day on which either party is required to take any action under the terms of this Agreement is not a business day, the action shall be taken on the next succeeding business day. Any reference in this Agreement to an agreement or other instrument shall mean such agreement or instrument as it may from time to time be supplemented, modified, amended and extended in accordance with the terms of this Agreement.

9.17 No Waiver. No waiver by either party of any default by the other party under this Agreement shall be implied from any omission or delay by the nondefaulting party to take action on

account of the default if the default persists or is repeated. Any waiver of any covenant, term or condition contained in this Agreement must be in writing. Any such express written waiver shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition, nor shall it affect any default other than the default expressly made the subject of the waiver. Any such express waiver shall be operative only for the time and to the extent stated in the waiver. The consent or approval by a party to or of any act by the other party shall not be deemed to waive or render unnecessary consent or approval to or of any subsequent act.

9.18 Relationship Between Parties. Purchaser and District agree that (a) the relationship between them is intended to be and shall at all times remain, in connection with the transactions contemplated by this Agreement, that of a private party as to Purchaser and a public agency as to District; and (b) no party is intended to be or shall be construed as a partner, joint venturer, alter ego, manager, controlling person or other business associate or participant of any kind of any other party or any of its affiliates, and no party intends to ever assume such status.

9.19 No Third-Party Beneficiaries. This Agreement shall not be deemed to confer any rights upon any individual or entity which is not a party hereto, and the parties hereto expressly disclaim any such third-party benefit.

9.20 Confidentiality. At any time and from time to time during the term, Purchaser shall have the right to designate as "Confidential" any trade secrets, confidential or proprietary information, literature, data, business and technical information related to this Agreement or the transactions or activities contemplated hereby. District agrees to implement, to the maximum extent practicable and permitted by law, such systems as are reasonably necessary to maintain the confidentiality and proprietary nature of any such "Confidential" material.

9.21 Force Majeure.

9.21.1 Except as otherwise provided in this Agreement (including Section 9.21.6), each party shall be entitled to an extension of the date of any performance required of such party under this Agreement if the failure of the party to duly perform was solely because of a Force Majeure Event (defined below); provided, however, that a Force Majeure Event shall not be recognized under this Agreement unless (i) the party seeking to assert such an event gives notice of such event to the other party, which notice shall explain in reasonable detail the nature of the Force Majeure Event, the obligations that have been affected by the Force Majeure Event, and how such Force Majeure Event has impaired the performance of such obligations, and (ii) such Force Majeure Event actually and materially impairs the due performance of such party's obligations and continues for not less than twenty (20) consecutive business days.

9.21.2 On receipt of the notice of the Force Majeure Event by the other party and the continuation of such Force Majeure Event for twenty (20) consecutive days, the performance required of the notifying party shall be excused on a day-by-day basis commencing on the date the notice of the Force Majeure Event was given until such Force Majeure Event has terminated. Any reciprocal obligations of the other party shall also be temporarily excused for this period of time.

9.21.3 Both parties shall make best efforts to end or resolve the Force Majeure Event.

9.21.4 If the Force Majeure Event continues for two (2) years, either party may, on

the giving of written notice to the other, terminate this Agreement; provided, however, if either party elects (within 90 days of such notice) to cure such Force Majeure Event, notifies the other party of such election and thereafter diligently pursues such cure, this Agreement shall remain in effect for three (3) additional years and the date of any performance required of the parties hereunder shall be concurrently extended until the sooner of (i) such time at as a cure is achieved, in which case this Agreement shall continue in full force and effect, or (ii) the end of such three (3) year extension, in which case this Agreement shall automatically terminate.

9.21.5 A "Force Majeure Event" shall be an act of God, riot, war, litigation, any delay in the issuance of any permit or approval by any third party governmental instrumentality or agency beyond the customary period therefor, acts of terrorism, civil unrest, flood, earthquake, or other cause beyond a party's reasonable control (including, without limitation, any mechanical, electronic, or communications failure, but excluding failure caused by a party's negligence).

9.21.6 Notwithstanding anything to the contrary in this Section 9.21, no Force Majeure Event shall at any time or in any way alter or delay Purchaser's obligation to make MACEP contributions pursuant to Section 9.3.

9.22 Jurisdiction. WITH RESPECT TO ANY SUIT, ACTION OR PROCEEDINGS RELATING TO THIS AGREEMENT (COLLECTIVELY, THE "PROCEEDINGS"), EACH PARTY IRREVOCABLY (I) SUBMITS EXCLUSIVELY TO THE JURISDICTION OF THE FEDERAL COURTS LOCATED IN THE STATE OF CALIFORNIA AND (II) WAIVES ANY OBJECTION WHICH IT MAY HAVE AT ANY TIME TO THE LAYING OF VENUE OF ANY PROCEEDINGS BROUGHT IN ANY SUCH COURT, WAIVES ANY CLAIM THAT SUCH PROCEEDINGS HAVE BEEN BROUGHT IN AN INCONVENIENT FORUM AND FURTHER WAIVES THE RIGHT TO OBJECT, WITH RESPECT TO SUCH PROCEEDINGS, THAT SUCH COURT DOES NOT HAVE JURISDICTION OVER SUCH PARTY.

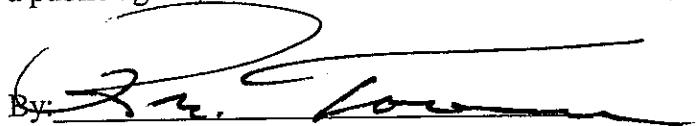
9.23 Waiver of Jury Trial. PURCHASER AND DISTRICT EACH HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING INVOLVING DIRECTLY OR INDIRECTLY ANY MATTER (WHETHER SOUNDING IN TORT, CONTRACT OR OTHERWISE) IN ANY WAY ARISING OUT OF, RELATED TO OR CONNECTED WITH THIS AGREEMENT OR THE RELATIONSHIP WHICH IS THE SUBJECT OF THIS AGREEMENT AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

9.25 Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED UNDER THE INTERNAL LAWS (AS OPPOSED TO THE LAWS OF CONFLICTS) OF THE STATE OF CALIFORNIA.

*Remainder of page intentionally left blank.  
Signatures on next page.*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

MCCLOUD COMMUNITY SERVICES DISTRICT,  
a public agency

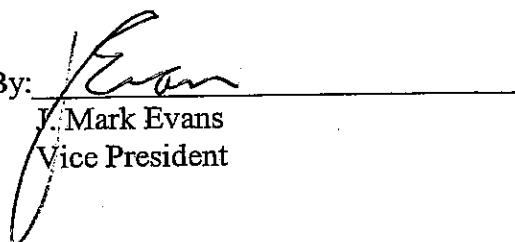
By: 

Rich Toreson  
President of the Board of Directors

ATTEST:

  
Peter Kampa  
Secretary of the Board of Directors,  
McCloud Community Services District

NESTLÉ WATERS NORTH AMERICA INC.,  
a Delaware corporation

By: 

Mark Evans  
Vice President

## **EXHIBIT A**

### **Description of Springs**

The description of the Springs is set forth on the following page.

**Exhibit A**  
**Property Description**  
**Spring Locations**

Scale 1: 20,000

12-135557-8

12 ZONE California Tape USA 2.0  
Laminated 12-8 Durum, 14/15/94

## EXHIBIT B

### Access Protocols

#### SPRING ACCESS PROTOCOL

Only qualified staff trained in the following procedures shall be allowed to enter, inspect or perform any service work in the District springs. All service, maintenance, repairs or construction work to be performed on the springs, other than the Exclusive Source, shall be completed qualified District staff. All service, maintenance, repairs or construction work to be performed on the Exclusive Source shall be completed by qualified NWNA or District staff pursuant to direction from NWNA.

1. The party requiring access to the spring shall issue written or verbal followed by written notification to the other party.

- a. Non Routine entry

- i. Notification required each time spring enclosure is opened.
    - ii. Provide a minimum two (2) working days advance notification.
    - iii. Figure 1 notification form to be submitted by the entering party to the other party.

- b. Routine entry

- i. Provide a schedule of entry dates, inspections to be conducted.
    - ii. If repair or other service work is required as a result of a routine inspection, provide notification to District as soon as possible, including notification as to which party is expected to perform such required service.

- c. Emergency entry

- i. Provide advance verbal notification to the other party followed (within two (2) working days) by written explanation of the need for emergency access.
    - ii. To the maximum extent practicable, the party requiring emergency access will coordinate its emergency response with the other party.

2. Obtaining/Possession of the Key

- a. A District lock shall be used to secure all springs and a key provided to NWNA. Only authorized and qualified District and NWNA staff shall have access to the spring key.
    - i. An extra key shall be kept in the District office in a locked file cabinet under restricted access.

3. Sign In/ Sign Out Sheet –

- a. Clip board with sign in sheet and Sharpie pen to hang inside of door of springhouse.
- b. Sign in sheet shall include date, full name, employee name, sign in time and sign out time and signature verifying that personnel has been trained. **Only trained personnel shall enter springhouse.** (See example attached).
- c. Sign in sheet shall be collected on a regular basis by the District and a copy provided to NWNA upon request.

4. Bypassing Flow

- a. If employees are to be in direct contact with water in the spring, all water is to be diverted to the bypass (creek) and not allowed to enter the discharge piping for the duration of the work plus one hour.
- b. If flow is to be diverted from the spring to the creek (bypass):
  - i. District and NWNA to agree on procedure for shutdown. District to approve of in advance, perform and/or be present for shutdowns involving the Non Exclusive Source.
  - ii. Pipeline valve to be slowly closed and then overflow valve to be opened.
- c. Perform work as required to keep bypass time to a minimum. Have all required materials, equipment and workers onsite prior to beginning bypass.
- d. Flow can be bypassed for:
  - i. A maximum of nine (9) hours per day. **Note that this includes the one hour that the springhouse must sit after work has ceased before being put back in service.**

5. Personnel Protective Equipment (PPE) –

- a. PPE shall be worn to protect against human contact with water and/or portions of the springhouse that come in contact with the water.
- b. PPE shall include: rubber boots or waders, rubber gloves, hard hats and hairnets.

6. Protection of Spring and Environment (i.e. creek and surrounding vegetation)

- a. Allowable Tools/Equipment/Materials
  - i. Hand excavation equipment including manual shovels, picks, bars, pneumatic hand held shovels, rakes and other similar tools to minimize impacts to the structure and environment.
  - ii. All tools, equipment and materials shall be brand new and disinfected as described below.

b. Disinfection Procedure

- i. Disinfection and Rinse Catch Basins – a minimum of two (2) catch basins shall be located just outside of the springhouse, one for disinfection and one for rinsing. These basins shall be used to prevent chlorine from contaminating the spring, creek and surrounding soil.
    1. Water level in catch basins shall be maintained to prevent overflow into surrounding environment.
  - ii. Disinfection solution shall be available within reach from the disinfection basin – 25 parts per million (ppm) chlorine and stored in secondary containment.
  - iii. Rinse solution shall be available within reach from the rinse basin – domestic potable water.
  - iv. Personnel – all personnel entering springhouse shall:
    1. Sign In, obtain necessary tools and put on PPE
    2. Step into Disinfection Basin with tools and PPE and Spray Disinfection solution over PPE and tools
    3. Step from Disinfection Basin directly into Rinse Basin and cover PPE and tools with rinse solution
    4. Step from Rinse Basin directly into springhouse.
    5. If personnel or tool leaves the springhouse, he/she/it shall be rinsed with water, then disinfection solution and then water again before re-entering springhouse.
  - v. Disposal of Disinfection and Rinse Solutions –
    1. Rinse and Disinfection Waste Solutions shall be captured in the catch basin and transported offsite with a suitable enclosed container. Container shall be secured during transportation.
    2. Waste Solutions shall be disposed of properly by discharging into the District's sewer system at a rate no greater than 50 gpm.
  - vi. Disinfection Procedure stated above shall be modified if bacteriological sample result reveals that coliform are present following entrance to spring enclosure. The sampling requirements are discussed below.
7. Potential Contamination of Springhouse (i.e. contact with spring water by potentially contaminated personnel, equipment, materials or tools). If potential contamination occurs:
- a. Verify water is bypassing pipeline.

- b. Remove, contain source of contamination immediately.
- c. Notify and report incident to District or NWNA immediately.
- d. District and/or NWNA to conduct immediate bacteriological sampling.
- e. District will operate chlorination equipment at the District water storage tank prior to placing affected spring back on line.
- f. Party responsible for the potential contamination shall be responsible for conducting remedial work if bacteriological sampling reveals that additional disinfection is required.
- g. No spring shall be allowed to discharge into the system if coliform exists following testing of the spring.

8. Cleanup at end of day

- a. Remove all equipment
- b. Sampling and Ending Bypass operation – to be performed by District on the Non-Exclusive Source.
  - i. The springhouse flow shall not be placed back into service for at least one hour after activity within the springhouse has ceased and a bacteriological sample has been taken by District.
  - ii. Slowly open pipeline valve and then close the bypass valve.

9. Sampling Requirements

- a. Disinfection of water supply is considered satisfactory when all bacteriological analyses indicate that water samples are negative for coliform organisms, and that Heterotrophic plate count (standard plate count) is less than 100 colony forming units per milliliter.
- b. If results are not satisfactory then construction and disinfection procedures will need to be modified until these requirements are met.
- c. Samples on the Non-Exclusive Source will be collected and delivered to the lab by District.

10. Rules within Springhouse

- a. No food, drink or tobacco of any kind.
- b. No sick personnel allowed within springhouse.
- c. No spitting in springhouse.

- d. Minimize impact to existing infrastructure and spring (i.e. no jumping, running, throwing of equipment, no moving of soil or rock unless absolutely necessary for construction and approved by District or/and NWNA).

#### 11. Future Training

- a. All new personnel with access to the spring will be trained in this procedure.
- b. Names, level of training, certification, etc. shall be submitted by and to both parties when new employees are authorized to inspect and/or enter the spring enclosure(s).

**FIGURE 1**  
**Spring Enclosure Access Notification Form**

Date of Notification: \_\_\_\_\_ Time: \_\_\_\_\_

Personnel Notifying: \_\_\_\_\_

Representing: NWNA District (Circle One)

Date/Time Notification Received: \_\_\_\_\_

MCSD Personnel Signature: \_\_\_\_\_

Date of Springhouse Access: \_\_\_\_\_

Begin Access Time: \_\_\_\_\_

End Access Time: \_\_\_\_\_

|       |       |       |            |
|-------|-------|-------|------------|
| Work  | to    | be    | Performed: |
| _____ | _____ | _____ | _____      |
| _____ | _____ | _____ | _____      |
| _____ | _____ | _____ | _____      |
| _____ | _____ | _____ | _____      |

Bacteriological Sample Required: \_\_\_\_\_ Yes \_\_\_\_\_ No

If yes, indicate Time that Sample should be taken: \_\_\_\_\_

Flow Bypass Required: \_\_\_\_\_ Yes \_\_\_\_\_ No

Personnel Disinfection Required: \_\_\_\_\_ Yes \_\_\_\_\_ No

## ESCROW AGREEMENT

This ESCROW AGREEMENT (the "Agreement") is entered into as of this 24<sup>th</sup> day of November, 2003, by and among MCCLOUD COMMUNITY SERVICES DISTRICT, a public agency ("District"), NESTLÉ WATERS NORTH AMERICA INC., a Delaware corporation ("Purchaser"), and CHICAGO TITLE COMPANY, a California corporation ("Escrow Agent").

### **RECITALS**

A. District and Purchaser entered into that certain Agreement for the Sale and Purchase of Spring Water dated as of October 1, 2003 ("Purchase Agreement").

B. The Purchase Agreement requires that certain cash amounts (the "Deposit") be delivered to an escrow agent to hold in escrow, to, among other things, ensure that funds are available for payment of certain costs and expenses associated with the design and construction of a spring water collection system (the "Collection System"), a pipeline delivery system (the "New Delivery System") and other related facilities (the "Ancillary Facilities"). District and the Purchaser have requested that Escrow Agent act as escrow agent for disbursing the Deposit.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the mutual covenants set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Appointment of Escrow Agent; Establishment of Sub-Escrow Accounts.

(a) Escrow. District and Purchaser hereby establish an escrow (the "Escrow") and appoint Escrow Agent to serve as escrow agent, in accordance with the terms and conditions set forth in this Agreement, and Escrow Agent hereby acknowledges the creation of such Escrow and accepts such appointment and agrees to receive and deal with the Deposit and all interest, if any, earned therein (collectively, the "Proceeds") as expressly provided herein.

(b) Construction Account. Upon execution of this Agreement, Escrow Agent will establish a segregated deposit account number with Union Bank at its Irvine Branch, 2001 Michelson Drive, Irvine, California 92606 (the "Construction Account").

2. Delivery of Proceeds; Interest on Proceeds.

(a) Purchaser shall deliver an initial deposit of \$250,000 (the "Initial Deposit") to Escrow Agent via wire transfer at the following address:

|                  |  |
|------------------|--|
| BANK:            | Union Bank<br>2001 Michelson Dr.<br>Irvine, CA 92606 |
| ABA ROUTING NO.: | 122 000 496  |
| CREDITING:       | CHICAGO TITLE COMPANY                                |
| ACCOUNT NUMBER:  | 9120 052915  |
| REFERENCE:       | Escrow No. 33820066-M70                              |
| ATTENTION:       | Amy D. Hiraheta                                      |

The Initial Deposit shall be deposited by Escrow Agent the same day it is received into the Construction Account.

(b) Purchaser shall deliver from time to time the required construction deposits (each a "Construction Deposit") to Escrow Agent via wire transfer pursuant to the instructions set forth in Section 2(a). Each Construction Deposit shall be deposited by Escrow Agent the same day it is received into the Construction Account.

(c) Escrow Agent shall not change Escrow or the Construction Account, without the prior consent of Purchaser. All interest actually earned on the Initial Deposit and each Construction Deposit, as well as other amounts deposited in Escrow, shall be for the account of Purchaser.

(d) Escrow Agent will hold and disburse the Initial Deposit, Construction Deposits and any other Proceeds in escrow upon the terms and conditions as expressly set forth in this Agreement.

### 3. Release of Proceeds From Escrow.

(a) Escrow Agent shall release the Proceeds in its possession (i) solely in accordance with this Section 3 or (ii) upon termination of this Agreement pursuant to Section 4(d) or Section 7 below.

(b) Provided that Escrow Agent is holding sufficient funds in the Construction Account, upon Escrow Agent's receipt of written notice (a "Construction Notice") executed by both District and Purchaser in the form attached hereto as Exhibit A, setting forth (i) the amount of the progress payment (a "Progress Payment") requested and (ii) the manner in which such Progress Payment should be disbursed to the order of the District, Escrow Agent shall, on the next business day following receipt of the Construction Notice, disburse the Progress Payment as indicated in the Construction Notice. Escrow Agent will, within two (2) business days following each disbursement from the Construction Account in accordance with this Section 3(b), notify Purchaser in writing of the amount of each Progress Payment that has been disbursed by Escrow Agent and the balance of the Construction Account. Escrow Agent shall not be responsible for obtaining copies of paid invoices for the amount of the Progress Payment requested, lien waivers and releases from any parties furnishing materials and/or services in connection with the requested Progress Payment, or any other documentation (other than the Construction Notice prior to disbursing each Progress Payment), all of which shall be handled outside of Escrow.

(c) Upon receipt of a notice in the form attached hereto as Exhibit B ("Final Construction Notice"), executed by both District and Purchaser, Escrow Agent will, on the next business day, disburse any remaining Proceeds to the order of Purchaser (the "Final Release"). Upon such Final Release, Escrow Agent shall close the Construction Account.

### 4. Exculpation and Indemnification of Escrow Agent. District and Purchaser understand and agree as follows:

(a) Escrow Agent shall have no obligation to release any Proceeds from Escrow unless and until (i) it has received the appropriate notice as required in Section 3 above and no

conflicting instructions from either District or Purchaser or (ii) this Agreement has been terminated.

(b) Escrow Agent, in performing its duties under this Agreement, shall not be liable to any party for damages, losses, or expenses, except for bad faith, gross negligence or willful misconduct on its part. Escrow Agent shall not incur any such liability for (i) any act or failure to act made or omitted in good faith or (ii) any action taken or omitted in reliance upon any notice, instruction, consent or other instrument that Escrow Agent shall in good faith believe to be genuine and which reasonably appears to comply with this Agreement, nor will the Escrow Agent be liable or responsible for forgeries, fraud, impersonations (other than, in each instance, any document which is manifestly a forgery, fraud or impersonation), or determining the scope of any agent's authority. Escrow Agent shall not be responsible or liable for the correctness, genuineness, or validity of any instrument delivered to it or for the identity or authority of any person executing or depositing any instrument. Escrow Agent shall have no duties beyond those which are expressly set forth in this Agreement.

(c) District and Purchaser shall indemnify and hold Escrow Agent harmless from and against any and all losses, claims, damages, liabilities and expenses (including, without limitation, actual, reasonable, customary, and documented legal fees) that may be reasonably incurred by Escrow Agent arising out of a controversy or dispute hereunder in connection with the performance of its obligations under the Agreement, including, without limitation, any litigation arising from this Agreement or its subject matter, except (i) such losses, claims, damages, liabilities and expenses as are occasioned by Escrow Agent's bad faith, gross negligence or willful misconduct and (ii) to the extent covered by Section 5. Prior to Escrow Agent's good faith determination that a dispute or controversy exists, Escrow Agent shall not be entitled to any reimbursement of any expenses under this Section 4(c).

(d) If any controversy or dispute arises among the parties to this Escrow, or with any other party, concerning the subject matter of this Escrow, its terms or conditions, or Escrow Agent receives conflicting instructions from District and Purchaser as to release of the Proceeds from Escrow, Escrow Agent will not be required to determine, resolve or mediate the controversy or to take any action regarding it. Escrow Agent may hold the Proceeds and may wait for settlement of any such controversy by agreement of the parties or final appropriate legal proceedings. Furthermore, Escrow Agent may, upon 90 days' notice to the parties hereto, at its option, file an action in interpleader in the Federal District Court for the Eastern District of California or the California Superior Court for San Francisco County, requiring the parties to answer and litigate any claims and rights among themselves. Escrow Agent is authorized to deposit with the clerk of such court the Proceeds. All actual, reasonable, customary, and documented costs and expenses incurred by Escrow Agent due to the interpleader action shall be paid equally by District and Purchaser. Upon initiating such action and depositing the Proceeds with the clerk of such court, Escrow Agent shall be fully released and discharged of and from all obligations and liabilities imposed by the terms of this Agreement, except such liabilities as may be occasioned by Escrow Agent's bad faith, gross negligence or willful misconduct, the Escrow and the Construction Account shall be closed and the Escrow and this Agreement terminated.

(e) District and Purchaser acknowledge that Escrow Agent is not a party to the Purchase Agreement. Escrow Agent shall have no responsibility for any obligations of District and Purchaser under the Purchase Agreement, including any obligation to determine the amount

of the Initial Deposit or Construction Deposits required to be deposited into escrow with Escrow Agent or the adequacy of the design and construction of the Construction System, New Delivery System or the Ancillary Facilities.

5. Compensation of Escrow Agent. Escrow Agent shall receive an annual escrow fee of \$750.00 which shall include (i) all costs and expenses to negotiate and document this Agreement, (ii) all normal and customary recurring fees and expenses, and (iii) up to 12 disbursements each year (whether by wire transfer or by check) pursuant to a Construction Notice or pursuant to Purchaser's direction. All compensation due to Escrow Agent shall be borne equally by District and Purchaser.

6. Further Assurances. District and Purchaser agree to deliver or cause to be delivered to Escrow Agent such further documents and instruments as may reasonably be required by Escrow Agent and agree to do and cause to be done such further acts as Escrow Agent shall reasonably request in order to carry out more effectively the provisions and purposes of this Agreement.

7. Termination of Agreement and Resignation of Escrow Agent.

(a) This Agreement shall terminate upon the full release of the Proceeds in accordance with Section 3 hereof, as provided in Section 4, or by the mutual consent of District and Purchaser. The rights of Escrow Agent under Section 4 of this Agreement shall survive its expiration or earlier termination.

(b) Escrow Agent may resign as escrow holder at its discretion upon 90 days' notice to District and Purchaser. Upon the end of such notice period, a successor escrow agent shall be appointed with the unanimous consent of District and Purchaser, and such successor escrow agent shall become "Escrow Agent" hereunder effective as of the date and time specified in Escrow Agent's notice of resignation, and Escrow Agent shall thereupon deliver all Proceeds then in its possession to such new escrow agent. If District and Purchaser are unable to agree upon a successor escrow agent prior to the effectiveness of such notice, such impasse shall be deemed a "dispute" and Escrow Agent shall exercise its rights under Section 4(d). District and Purchaser shall have the right at any time upon their mutual consent to substitute a new escrow agent to act as "Escrow Agent" under this Agreement by giving notice thereof to Escrow Agent then acting.

8. Notice. All notices, communications and instructions required or desired to be given under this Agreement shall be in writing and may be delivered (a) by personal delivery, (b) by United States Mail, postage prepaid, registered or certified mail, return receipt requested, (c) by overnight courier, or (d) by facsimile (provided an identical notice is also sent simultaneously by mail, overnight courier, or personal delivery as otherwise provided in this Section 8), in each case addressed as follows:

To District:

McCloud Community Services District  
220 Minnesota, P.O. Box 640  
McCloud, California 96057  
Attention: General Manager  
Telephone: (530) 964-2017  
Facsimile: (530) 964-2872

If to Purchaser:

Nestlé Waters North America Inc.  
2051 Hilltop Dr., #A-20  
Redding, CA 96002  
Attention: Natural Resource Manager  
Telephone: (909) 390-0925  
Facsimile: (909) 390-2258

With a copy to:

McMurchie, Weill, Lenahan, Lee, Slater &  
Pearce, LLP  
1030 15<sup>th</sup> Street, Suite 300  
Sacramento, California 95815  
Attention: David W. McMurchie, Esq.  
Telephone: (916) 443-1030  
Facsimile: (916) 443-0869

With a copy to:

Sonnenschein Nath & Rosenthal LLP  
601 South Figueroa Street, Suite 1500  
Los Angeles, California 90017  
Attention: Robert M. Johnson, Esq.  
Telephone: (213) 892-5071  
Facsimile: (203) 623-9924

To Escrow Agent:

Chicago Title Company  
16969 Von Karman Avenue, 2<sup>nd</sup> Floor  
Irvine, California 92606  
Attention: Amy Hiraheta  
Telephone: (949) 263-5818  
Facsimile: (949) 263-0344

or to such other address and to the attention of such other person as any of the above may have furnished to the other parties by notice given in accordance with the provisions of this Section. All notices shall be deemed effective upon the date of receipt, the date when delivery is refused, or the date delivery is attempted where a notice party has failed to provide a current address. Any notice that is delivered on a day other than a business day shall be deemed delivered on the next succeeding business day. In the event notice received is by telecopy after 4:00 p.m., such notice shall be deemed delivered the next business day. No notice may be delivered by email.

9. Miscellaneous.

(a) Nothing in this Agreement is intended to or shall confer upon anyone other than the parties hereto any legal or equitable right, remedy or claim.

(b) This Agreement represents the entire and exclusive agreement among the parties hereto regarding the subject matter hereof and supersedes any and all prior written and oral communications of any nature concerning the subject matter hereof. No amendment or modification of this Agreement may be made except by an instrument in writing signed by all parties. Nothing herein shall be deemed to constitute an amendment or a modification of the Purchase Agreement. As between District and Purchaser, in the event of any conflict between

the terms of this Agreement and the Purchase Agreement, the terms of the Purchase Agreement shall control.

(c) This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. However, this Agreement may not be assigned in whole or in part by any party (other than to such party's respective affiliates or successors to such party's business interests covered by this Agreement) without consent of the others, which consent will not be unreasonably withheld; and any attempted assignment without such consent shall be void.

(d) In the event that any provision hereof is found invalid or unenforceable in any jurisdiction, then such provision will be enforced to the maximum extent permitted by law in such jurisdiction, rather than voided, and the remaining provisions of this Agreement will remain in full force and effect. The enforceability of such provision shall be otherwise unaffected and shall remain enforceable in all other jurisdictions. No failure on the part of either party hereto to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof or as a waiver of any other right, power or remedy hereunder or of the performance of any obligation of either party hereto; and no single or partial exercise by either party hereto of any right, power or remedy hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

(e) The headings herein are for convenience of reference only and shall not affect the construction or interpretation of any provision hereof. The use of the singular or plural form will include the other form and the use of the masculine, feminine or neutral gender will include the other genders.

(f) This Agreement shall be construed in accordance with and governed by the laws of the State of California; provided, however, that if any law or laws of the State of California shall require or otherwise permit the laws of any other jurisdiction to be applied in any proceeding involving this Agreement, such law or laws shall be disregarded with the result that the remaining laws of the State of California shall be applied.

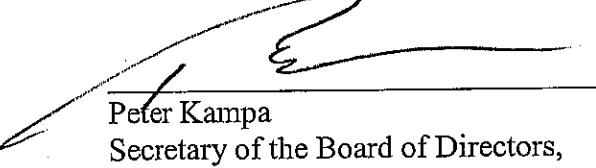
(g) This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one original document. This Agreement may be executed by facsimile or electronically with the same effect as if manually executed.

(h) Each party executing this Agreement represents and warrants in favor of the other parties that it has obtained all necessary approvals to enter into this Agreement and that the person or persons executing this Agreement on such party's behalf have been duly authorized and empowered to do so.

*Remainder of Page Intentionally Left Blank  
Signatures on next page.*

IN WITNESS WHEREOF, the parties to this Agreement have executed this Agreement as of the day and year first above written.

Attest:

  
Peter Kampa  
Secretary of the Board of Directors,  
McCloud Community Services District

“Purchaser”:

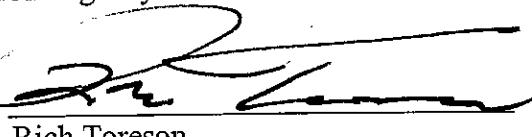
NESTLÉ WATERS NORTH AMERICA  
INC.,  
a Delaware corporation

By: \_\_\_\_\_

J. Mark Evans  
Vice President

“District”:

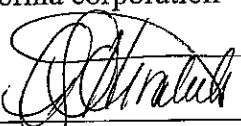
MCLOUD COMMUNITY SERVICES  
DISTRICT,  
a public agency

By: 

Rich Toreson  
President of the Board Directors

“Escrow Agent”:

CHICAGO TITLE COMPANY,  
a California corporation

By: 

Amy Hiraheta  
Senior Escrow Officer &  
Assistant Vice President

IN WITNESS WHEREOF, the parties to this Agreement have executed this Agreement as of the day and year first above written.

“District”:

MCLOUD COMMUNITY SERVICES DISTRICT,  
a public agency

Attest:

Peter Kampa  
Secretary of the Board of Directors,  
McCloud Community Services District

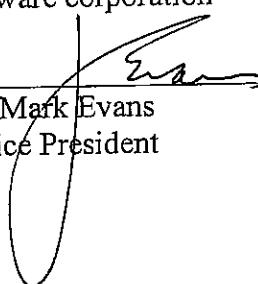
By: \_\_\_\_\_  
Rich Toreson  
President of the Board Directors

“Purchaser”:

NESTLÉ WATERS NORTH AMERICA INC.,  
a Delaware corporation

By: \_\_\_\_\_

J. Mark Evans  
Vice President



“Escrow Agent”:

CHICAGO TITLE COMPANY,  
a California corporation

By: \_\_\_\_\_

Amy Hiraheta  
Senior Escrow Officer &  
Assistant Vice President

**EXHIBIT A**

**to Escrow Agreement**

**Form of Periodic Construction Disbursement Notice**

To: \_\_\_\_\_

This Disbursement Notice is delivered to you pursuant to that certain Escrow Agreement dated \_\_\_\_\_ between McCloud Community Services District, Nestlé Waters North America Inc. and \_\_\_\_\_ (the "Escrow Agreement"). In the event of any conflict between this Notice and the Escrow Agreement, the terms of the Escrow Agreement shall control. All capitalized terms not otherwise defined herein shall have the meaning attributed thereto in the Escrow Agreement.

The undersigned parties hereby instruct Escrow Agent to debit a Progress Payment in the amount of \$ \_\_\_\_\_ from the Construction Account.

The Progress Payment shall be in the form of a check made payable to the McCloud Community Services District.

"District":

MCLOUD COMMUNITY SERVICES DISTRICT,  
a public agency

By \_\_\_\_\_

[Printed Name and Title]

"Purchaser":

NESTLÉ WATERS NORTH AMERICA INC.,  
a Delaware corporation

By \_\_\_\_\_

[Printed Name and Title]

**EXHIBIT B**  
**to Escrow Agreement**

Form of Final Construction Disbursement Notice

To: \_\_\_\_\_

This Disbursement Notice is delivered to you pursuant to that certain Escrow Agreement dated \_\_\_\_\_ between McCloud Community Services District, Nestlé Waters North America Inc. and \_\_\_\_\_ (the "Escrow Agreement"). In the event of any conflict between this Notice and the Escrow Agreement, the terms of the Escrow Agreement shall control. All capitalized terms not otherwise defined herein shall have the meaning attributed thereto in the Escrow Agreement.

The undersigned parties hereby instruct Escrow Agent to debit a Final Release in the amount of \$ \_\_\_\_\_ from the Construction Account.

The Final Release shall be in the form of a check made payable to the McCloud Community Services District.

You are hereby instructed to close the Construction Account and return any funds remaining therein to the order of Nestlé Waters North America.

"District":

MCLOUD COMMUNITY SERVICES DISTRICT,  
a public agency

By \_\_\_\_\_

[Printed Name and Title]

"Purchaser":

NESTLÉ WATERS NORTH AMERICA INC.,  
a Delaware corporation

By \_\_\_\_\_

[Printed Name and Title]

**EXHIBIT A**  
**to Escrow Agreement**

**Form of Periodic Construction Disbursement Notice**

To: \_\_\_\_\_

This Disbursement Notice is delivered to you pursuant to that certain Escrow Agreement dated \_\_\_\_\_ between McCloud Community Services District, Nestlé Waters North America Inc. and \_\_\_\_\_ (the "Escrow Agreement"). In the event of any conflict between this Notice and the Escrow Agreement, the terms of the Escrow Agreement shall control. All capitalized terms not otherwise defined herein shall have the meaning attributed thereto in the Escrow Agreement.

The undersigned parties hereby instruct Escrow Agent to debit a Progress Payment in the amount of \$ \_\_\_\_\_ from the Construction Account.

The Progress Payment shall be in the form of a check made payable to the McCloud Community Services District.

"District":

MCLOUD COMMUNITY SERVICES DISTRICT,  
a public agency

By \_\_\_\_\_

[Printed Name and Title]

"Purchaser":

NESTLÉ WATERS NORTH AMERICA INC.,  
a Delaware corporation

By \_\_\_\_\_

[Printed Name and Title]

**EXHIBIT B**  
**to Escrow Agreement**

**Form of Final Construction Disbursement Notice**

To: \_\_\_\_\_

This Disbursement Notice is delivered to you pursuant to that certain Escrow Agreement dated \_\_\_\_\_ between McCloud Community Services District, Nestlé Waters North America Inc. and \_\_\_\_\_ (the "Escrow Agreement"). In the event of any conflict between this Notice and the Escrow Agreement, the terms of the Escrow Agreement shall control. All capitalized terms not otherwise defined herein shall have the meaning attributed thereto in the Escrow Agreement.

The undersigned parties hereby instruct Escrow Agent to debit a Final Release in the amount of \$ \_\_\_\_\_ from the Construction Account.

The Final Release shall be in the form of a check made payable to the McCloud Community Services District.

You are hereby instructed to close the Construction Account and return any funds remaining therein to the order of Nestlé Waters North America.

"District":

MCLOUD COMMUNITY SERVICES DISTRICT,  
a public agency

By \_\_\_\_\_

[Printed Name and Title]

"Purchaser":

NESTLÉ WATERS NORTH AMERICA INC.,  
a Delaware corporation

By \_\_\_\_\_

[Printed Name and Title]

## **EXHIBIT D**

### Purchaser's Internal Standards

This Exhibit is confidential and contains sensitive proprietary business information of Purchaser. It is held separately by District and is exempt from public disclosure by the California Public Records Act (Cal. Gov. Code § 6250 *et seq.*).

## SCHEDULE 1

### Design and Construction of Facilities

1. Purpose. This Schedule 1 (the "Schedule") is attached to and made a part of that certain Agreement for the Sale and Purchase of Spring Water (the "Agreement"), dated as of October 1, 2003, by and between McCloud Community Services District, a public agency ("District"), and Nestlé Waters North America Inc., a Delaware corporation ("Purchaser"). The purpose of this Schedule is to set forth how the various improvements contemplated under the Agreement are to be constructed, who will undertake the construction, who will pay for the construction, and who will own the improvements. To the extent there is any inconsistency between the terms and provisions of this Schedule and the terms and provisions of the Agreement, the terms and provisions of the Agreement shall control. All capitalized terms used but not defined in this Schedule have the meanings given them in the Agreement.

2. Purchaser's Responsibility. Purchaser shall be responsible for the costs attributable to the design, planning and construction of the Collection System, the New Delivery System and the Ancillary Facilities. Such construction may occur in phases at the sole discretion of Purchaser. However, Purchaser shall only pay the costs of elements of the design, planning and construction of the Collection System, the New Delivery System and the Ancillary Facilities that are reasonably necessary to construct the facilities specified in the plans and specifications approved in advance by Purchaser in accordance with Paragraph 3 hereof.

3. District's Responsibility. District shall, utilizing money provided by Purchaser pursuant to this Schedule, design and construct the Collection System, the New Delivery System and the Ancillary Facilities in accordance with Purchaser's requirements and with plans and specifications approved by Purchaser in advance in writing. District shall, also utilizing money provided by Purchaser, cooperate with and assist Purchaser in complying with all reasonably necessary or reasonably required environmental or regulatory review by local, state and/or federal agencies, and in obtaining all necessary permits and easements for the construction, operation, maintenance and repair of the Collection System, the New Delivery System and the Ancillary Facilities. District shall act as lead agency with respect to any environmental or other reviews regarding the construction of the Collection System, the New Delivery System and the Ancillary Facilities when and to the extent it is legally permitted to do so. District shall also cooperate with Purchaser by issuing all District permits, licenses and other approvals that District may require for the relationship and transactions contemplated herein. District shall take all steps which are reasonably necessary to ensure the protection of the quality and quantity of the Springs and Spring Water.

4. Deposits for Design. Purchaser and District shall establish an escrow account ("Escrow Account") managed by an escrow agent mutually acceptable to Purchaser and District, to hold deposits made by Purchaser under this Schedule. Such Escrow Account shall be interest-bearing, and all interest earned on the Escrow Account shall belong to Purchaser. Within thirty (30) days from the date of the execution of this Schedule, Purchaser shall deposit (the "Initial Deposit") in the Escrow Account in an amount jointly estimated by District and Purchaser to be sufficient to pay the fees and costs of the design engineer selected jointly by District and Purchaser (the "Design Engineer") who will design the Collection System, the New Delivery System and the Ancillary

Facilities in accordance with Purchaser's requirements, standards and specifications. As design progresses, Purchaser shall deposit into the Escrow Account such additional amounts as District and Purchaser shall jointly determine are necessary to pay the full amount of the fees and costs of the Design Engineer for the design of the Collection System, the New Delivery System and the Ancillary Facilities and the preparation of the plans and specifications therefor. Purchaser shall deposit all such additional amounts, if any, into the Escrow Account within thirty (30) days after the date that such joint determination is made.

5. Design. Upon deposit by Purchaser of the Initial Deposit provided for in Paragraph 4, District shall authorize the Design Engineer to proceed with the design of the Collection System, the New Delivery System and the Ancillary Facilities and the preparation of the plans and specifications therefor. District and the Design Engineer shall consult and coordinate with Purchaser as design progresses and Purchaser shall have the right and be afforded the ongoing opportunity to review and approve all preliminary and progress design documents and to attend all meetings between District and the Design Engineer regarding the design of the Collection System, the New Delivery System and the Ancillary Facilities. The design of the Collection System, the New Delivery System and the Ancillary Facilities and the plans and specifications therefor shall not be deemed to be final until they are approved in writing by both District and Purchaser.

6. Contracts. Upon such written approval of the design of the Collection System, the New Delivery System and the Ancillary Facilities and the plans and specifications therefor (the "Plans and Specifications") by both District and Purchaser, District and Purchaser shall consult with the Design Engineer and agree on a preliminary budget which is intended to specify all estimated costs to construct the Collection System, the New Delivery System and the Ancillary Facilities according to the Plans and Specifications. In awarding a construction contract for the construction of such facilities, District shall publicly bid the Plans and Specifications and award a construction contract to the lowest responsible bidder as required by California law. District will require all contractors interested in bidding on the construction of the facilities pursuant to the Plans and Specifications to be pre-qualified according to a pre-qualification process and criteria mutually agreed upon by District and Purchaser and consistent with the provisions of California Public Contract Code Section 20101 et seq. If the amount of the bid by the lowest responsible bidder exceeds the budget previously approved by Purchaser and District with respect to the construction of the Plans and Specifications, District shall have the option to either reject all bids and re-bid the Project or, in the alternative, enter into negotiations with Purchaser and the lowest responsible bidder regarding mutually acceptable revisions to the Plans and Specifications that will result in a construction price for the Collection System, the New Delivery System and Ancillary Facilities acceptable to Purchaser.

7. Design Criteria. The Collection System, the New Delivery System and the Ancillary Facilities shall be designed to satisfy Purchaser's standards, specifications and requirements for facilities which will collect and deliver the Spring Water to the Bottling Facility and sale by Purchaser for public consumption as bottled spring water. Purchaser shall deliver such standards, specifications and requirements to District and the Design Engineer before design commences. Purchaser and District acknowledge and agree that the Collection System and the New Delivery System shall, to the maximum extent practicable, be designed to be segregated from other water delivery and storage systems owned or operated by District and dedicated solely to the storage and delivery of Spring Water for and to the Bottling Facility.

8. Purchaser's Construction Deposits. Within thirty (30) days after the date District awards a contract or contracts for the construction of the Collection System, the New Delivery System and the Ancillary Facilities, Purchaser shall deposit into the Escrow Account an amount equal to fifty percent (50%) of the total amount of the contract price(s) of the contractor or contractors to whom the contract or contracts have been awarded. The Escrow Agent shall utilize the amount thereof, including interest earnings thereon, for the payment of progress payments to the contractor(s) as construction progresses. Upon the payment of each progress payment to the contractor(s), Escrow Agent shall notify Purchaser of the total amount thereof in writing and Purchaser shall deposit into the Escrow Account, within thirty (30) days after the date of receipt of each such notice, an amount equal to at least fifty percent (50%) of the total balance of the contract price, it being the intent of District and Purchaser that the Escrow Account shall at all times, until the construction of the Collection System, the New Delivery System and the Ancillary Facilities is completed, have available from Purchaser's deposits, together with the interest earnings thereon, an amount equal to at least fifty percent (50%) of the total balance of the contract price(s) for the construction of the Collection System, the New Delivery System and the Ancillary Facilities. Purchaser shall deposit into the Escrow Account an amount sufficient to make final payment to the contractor(s) at least 10 (ten) days prior to the date that such final payment will be due to the contractor(s). Upon completion of the construction of the Collection System, the New Delivery System and the Ancillary Facilities and when the Escrow Agent has paid the full amount of the contract prices for the construction of such facilities, and when District has been paid or reimbursed for all costs and expenses which it has advanced and which are to be paid by Purchaser hereunder, the Escrow Agent shall pay any remaining amount of Purchaser's deposits and the interest earned thereon to Purchaser.

9. Progress Payments. The contractor will be paid progress payments at regular intervals as the work progresses. District will require the contractor to enter into an agreement providing that ten percent (10%) of each progress payment be placed in retention with Escrow Holder in a separate sub-account to ensure the satisfactory performance of the construction contract. Alternatively, the contractor may substitute securities for the monies being held in retention at contractor's sole cost and expense. District shall provide Purchaser with a copy of each progress payment request, together with any supporting documents. Purchaser shall have ten (10) days to approve or disapprove each such payment. If approval or disapproval by Purchaser is not made within ten (10) days, then District may authorize the Escrow Agent to make the progress payment.

10. Award of Contract(s). District shall award a contract or contracts for the construction of the Collection System, the New Delivery System and the Ancillary Facilities to the contractor determined to be the lowest responsible bidder as required by California Public Contract Code Section 20680 *et seq.* District shall issue a notice or notices to proceed to the contractor(s) upon satisfaction by the contractor(s) of the conditions precedent to the issuance of such a notice, as set forth in the plans and specifications and/or District's Instructions to Bidders.

11. Inspection. District shall be responsible for the inspection of the construction of the Collection System, the New Delivery System and the Ancillary Facilities in accordance with the terms of the construction contract(s) and the construction schedule set forth in such contract(s). Purchaser, its agents, employees and its consultants shall have access to the construction sites on an ongoing basis as construction progresses and District shall confer and cooperate with Purchaser and

its consultants to make sure that the Collection System, the New Delivery System and the Ancillary Facilities are constructed in accordance with the plans and specifications and construction schedule therefor so that such facilities, when completed, will satisfy Purchaser's standards, specifications and requirements for the delivery of the Spring Water to the Bottling Facility. The actual and reasonable costs incurred by District solely with respect to the administration and inspection of the construction of the Collection System, the New Delivery System and the Ancillary Facilities shall be included in the costs of the construction therefor and shall be reimbursed by Purchaser to District upon receipt by Purchaser of an invoice from District together with reasonable supporting documentation with respect to such costs.

12. Change Orders. Purchaser shall have the right to make changes in the Collection System improvements, the New Delivery System and/or the Ancillary Facilities from time to time and at any time as construction progresses by giving District and the contractor written direction to make such changes (each such change is herein referred to as a "Change Order") and District shall negotiate with the contractor any changes in the scope of the construction work to accomplish the Change Order and any corresponding increase in the contractor's contract price in a manner satisfactory to Purchaser. District shall notify Purchaser in writing of any such negotiated increase in the contract price and Purchaser shall approve or disapprove of such increase in writing within five (5) business days after Purchaser's receipt of District's notice. If Purchaser approves of any such increase in the contract price, the amount thereof shall be added to the contract price for purposes of determining the amount of Purchaser's deposits pursuant to Paragraph 8 hereof. If Purchaser disapproves any such increase in the contract price, Purchaser may revise its requested changes and so notify District in writing, and District shall treat such revised change as a new Change Order and follow the procedures as set forth herein.

13. Construction Manager. Prior to the commencement of construction of the Collection System, the New Delivery System and the Ancillary Facilities, Purchaser and District shall jointly select a construction manager (the "Construction Manager") who will continuously inspect the construction of the Collection System, the New Delivery System and the Ancillary Facilities, provide progress reports on such construction to District and Purchaser and otherwise keep District and Purchaser updated and informed on critical path items, delays, compliance with plans and specifications and any other issues related to such construction. The fees charged by Construction Manager for such services shall be paid exclusively by Purchaser.

14. Ownership. Upon completion of the construction of the Collection System, the New Delivery System and the Ancillary Facilities, and acceptance thereof by District and Purchaser, District shall become the owner of the Collection System, the New Delivery System and the Ancillary Facilities without payment by District of any amount to Purchaser. District shall pay all real property taxes and assessments levied upon the Springs, the Collection System, the New Delivery System and the Ancillary Facilities. However, for the Term, and subject to the provisions of the Agreement, including Section 2.1.3, Article 3 and Section 6.1, Purchaser shall have the exclusive right to use the Collection System and New Delivery System.

15. Grants and Other Sources of Funding. District shall use its best efforts to identify and, to the extent applicable, diligently pursue federal, state and local grants and other programs that may be a source of funds for the design, planning and construction of the Collection System, the

New Delivery System and the Ancillary Facilities. To the extent District succeeds in obtaining any such funds, Purchaser's monetary obligations under this Schedule shall be correspondingly reduced on a dollar-for-dollar basis.